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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5579; Directorate Identifier 2016–CE–010–AD; Amendment 39–18586; AD 2016–14–05]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2008–15–06 for certain Textron Aviation Inc. Models 175 and 175A airplanes (type certificate previously held by Cessna Aircraft Company). AD 2008–15–06 required checking the airplane logbook to determine if the original engine mounting brackets had been replaced. If the original engine mounting brackets were still installed, the AD required repetitively inspecting those brackets for cracks and replacing any cracked engine mounting bracket until all four original engine mounting brackets were replaced. Replacing all four original engine mounting brackets terminated the actions required in AD 2008–15–06. Since we issued AD 2008–15–06, we have determined that the applicability needs to be changed to add one serial number and remove another. This new AD retains the actions required in AD 2008–15–06 and changes the Applicability section. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective August 11, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of September 2, 2008 (73 FR 43845, July 29, 2008).

ADDRESSES: For service information identified in this final rule, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006; Internet: *www.cessna.txtav.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5579.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5579; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gary Park, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4123; fax: (316) 946–4107, email: *gary.park@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2008–15–06, Amendment 39–15618 (73 FR 43845, July 29, 2008), (“AD 2008–15–06”). AD 2008–15–06 applied to certain Textron Aviation Inc. Models 175 and 175A airplanes (type certificate previously held by Cessna Aircraft Company). The NPRM published in the **Federal Register** on April 12, 2016 (81 FR 21501). The NPRM was prompted by our determination that a serial number had been inadvertently included in the applicability and a serial number had been inadvertently omitted from the applicability. The NPRM proposed to retain the requirements of AD 2008–15–06, add one serial number to the applicability and remove another. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 21501, April 12, 2016) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 21501, April 12, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 21501, April 12, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed Cessna Single Engine Service Bulletin SEB07–2, Revision 2, dated June 18, 2007. The service information describes procedures for inspecting the upper and lower engine mounting brackets on both the left and right sides for cracks and replacing cracked engine mounting brackets. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD will affect 1,218 airplanes in the U.S. registry.

We estimate the following costs to do each inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
7.5 work-hours × $80 per hour = $600	Not applicable	$600	$730,800

We estimate the following costs to do any necessary replacements:

Labor cost	Parts cost	Total cost per airplane
3 work-hours per bracket × $80 per hour = $240 per bracket. 4 brackets per airplane × $240 per bracket = $960.	$200 per bracket. 4 × $200 = $800 for all 4 brackets.	$440 per bracket. $1,760 to replace all 4 brackets.

There is no estimated cost of compliance difference between this AD and AD 2008–15–06 since there is no change in the number of affected airplanes or in the required actions. The cost impact on the public will be in the removal of serial number 691 and the addition of serial number 619.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–15–06, Amendment 39–15618 (73 FR 43845, July 29, 2008), and adding the following new AD:

2016–14–05 Textron Aviation Inc.: Amendment 39–18586; Docket No. FAA–2016–5579; Directorate Identifier 2016–CE–010.

(a) Effective Date

This AD is effective August 11, 2016.

(b) Affected ADs

This AD replaces AD 2008–15–06, Amendment 39–15618 (73 FR 43845, July 29, 2008) ("AD 2008–15–06").

(c) Applicability

This AD applies to the Textron Aviation Inc. airplane models and serial numbers (type certificate previously held by Cessna Aircraft Company) that are certificated in any category listed in Table 1 to paragraph (c) of this AD. The new airplane affected by this AD is model number 175A, serial number 619, manufactured in 1960.

TABLE 1 TO PARAGRAPH (c) OF THIS AD—AIRPLANES AFFECTED

Model	Serial Nos.	Year manufactured
(1) 175	55001 through 55703	1958.
(2) 175	55704 through 56238	1959.
(3) 175	28700A, 626, and 640	1958 and 1959.
(4) 175 A	56239 through 56777	1960.
(5) 175 A	619	1960.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 71, Power Plant.

(e) Unsafe Condition

This AD was prompted by the determination that one airplane needs to be added and another airplane needs to be removed from the Applicability section. We are issuing this AD to detect and correct cracks in the engine mounting brackets, which could result in failure of the engine mounting bracket. This failure could lead to the engine detaching from the firewall.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Airplane Logbook Check

(1) Check the airplane logbook to determine if all four of the original engine mounting brackets have been replaced. Do the logbook check at the following compliance time, as applicable. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 may do this action.

(i) *For airplanes previously affected by AD 2008–15–06:* Within the next 30 days after September 2, 2008 (the effective date retained from AD 2008–15–06).

(ii) *For the new airplane affected by this AD:* Within the next 30 days after August 11, 2016 (the effective date of this AD).

(2) If you can positively determine that all four of the original engine mounting brackets have been replaced, no further action is required. Make an entry into the airplane logbook showing compliance with this portion of the AD in accordance with 14 CFR 43.9. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 may do this action.

(3) If you cannot positively determine that all four of the original engine mounting brackets have been replaced, inspect each of the upper and lower engine mounting brackets on both the left and right sides for cracks following Cessna Single Engine Service Bulletin SEB07–2, Revision 2, dated June 18, 2007. Do the inspections at the following compliance times, as applicable.

(i) *For airplanes previous affected by AD 2008–15–06:* Initially inspect within the next 12 months after September 2, 2008 (the effective date retained from AD 2008–15–06). If no cracks are found, repetitively inspect thereafter at intervals not to exceed 500 hours time-in-service (TIS) until all four of the original engine mounting brackets are replaced.

(ii) *For the new airplane affected by this AD:* Initially inspect within the next 12 months after August 11, 2016 (the effective date of this AD). If no cracks are found, repetitively inspect thereafter at intervals not to exceed 500 hours TIS until all four of the original engine mounting brackets are replaced.

(h) Engine Mounting Bracket Replacement

If cracks are found in any of the engine mounting brackets during any inspection required in paragraph (g)(3) of this AD, including all subparagraphs, before further flight after the inspection in which cracks are found, replace the cracked engine mounting bracket(s) following Cessna Single Engine Service Bulletin SEB07–2, Revision 2, dated June 18, 2007. Replacing the cracked engine mounting bracket terminates the repetitive inspections required in paragraphs (g)(3)(i) and (ii) of this AD only for the replaced engine mounting bracket.

(i) Terminating Action

To terminate the repetitive inspections required in paragraphs (g)(3)(i) and (ii) of this AD, you may replace all four original engine mounting brackets following Cessna Single Engine Service Bulletin SEB07–2, Revision 2, dated June 18, 2007.

(j) Engine Mounting Bracket Disposal

For all airplanes affected by this AD: Before further flight after the engine mounting bracket is removed for replacement, dispose of every replaced bracket following 14 CFR 43.10, paragraph (c)(6), which states the following: "Mutilation. The part may be mutilated to deter its installation in a type certificated product. The mutilation must render the part beyond repair and incapable of being reworked to appear to be airworthy."

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved for AD 2008–15–06 are approved as AMOCs for the corresponding provisions of this AD.

(l) Related Information

For more information about this AD, contact Gary Park, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4123; fax: (316) 946–4107, email: *gary.park@faa.gov*

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on September 2, 2008 (73 FR 43845, July 29, 2008).

(i) Cessna Single Engine Service Bulletin SEB07–2, Revision 2, dated June 18, 2007.

(ii) Reserved.

(4) For Cessna Aircraft Company service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 942–9006; Internet: *www.cessna.txtav.com.*

(5) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5579.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on June 28, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15866 Filed 7–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0493]

Safety Zone; Southern California Annual Fireworks for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the San Diego, CA POPS Fireworks Display on the waters of San Diego Bay, CA on specific evenings from July 1, 2016 to September 4, 2016. This safety zone is necessary to provide for the safety of the participants, spectators, official vessels of the events, and general users of the waterway. Our regulation for the southern California annual fireworks for the San Diego Captain of the Port Zone identifies the regulated area for the events. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of official patrol vessels in the regulated area without the approval of the Captain of the Port, or designated representative.

DATES: The regulations in 33 CFR 165.1123 will be enforced from 9:00 p.m. through 10:00 p.m. on July 1 through July 3, July 8 and July 9, July 15 and July 16, July 29 and July 30, August 5 and August 6, August 12 and August 13, August 20, August 26 and August 27 and September 1 through September 4, 2016 for Item 1 in Table 1 of 33 CFR 165.1123.

FOR FURTHER INFORMATION CONTACT: If you have questions on this publication, call or email Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 165.1123 for a safety zone on the waters of San Diego Bay, CA for the San Diego, CA POPS Fireworks Display in 33 CFR 165.1123, Table 1, Item 1 of that section, from 9:00 p.m. through 10:00 p.m. on specific evenings from July 1, 2016 to September 4, 2016. This enforcement action is being taken to provide for the safety of life on navigable waterways during the fireworks events. Our regulation for southern California annual fireworks events for the San Diego Captain of the Port Zone identifies the regulated entities for the events. Under the provisions of 33 CFR 165.1123, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, state, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.1123 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: June 22, 2016.

E.M. Cooper,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2016–16014 Filed 7–6–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2012–0323; FRL–9948–68–Region 4]

Air Plan Approval and Air Quality Designation; TN; Redesignation of the Sullivan County Lead Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On July 15, 2015, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Bristol, Tennessee 2008 lead nonattainment area (hereafter referred to as the "Bristol Area" or the "Area") to attainment for the 2008 lead National Ambient Air Quality Standards (NAAQS) and an associated State Implementation Plan (SIP) revision containing a maintenance plan and a reasonably available control measures (RACM) determination for the Area. EPA is taking the following separate final actions related to the July 15, 2015, redesignation request and SIP revision: Determining that the Bristol Area is continuing to attain the 2008 lead NAAQS; approving and incorporating into the SIP the State's plan for maintaining attainment of the 2008 lead standard; approving and incorporating into the SIP the State's RACM determination; and redesignating the Bristol Area to attainment for the 2008 lead NAAQS.

DATES: This rule will be effective August 8, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2012–0323. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman may be reached by phone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 2008, EPA promulgated a revised primary and secondary lead NAAQS of 0.15 micrograms per cubic meter ($\mu g/m^3$). *See* 73 FR 66964. Under EPA's regulations at 40 CFR part 50, the 2008 lead NAAQS are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with appendix R of 40 CFR part 50, is less than or equal to 0.15 $\mu g/m^3$. *See* 40 CFR 50.16. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement.

EPA designated the Bristol Area as a nonattainment area for the 2008 lead NAAQS on November 22, 2010 (effective December 31, 2010), using 2007–2009 ambient air quality data. *See* 75 FR 71033. This established an attainment date five years after the December 31, 2010, effective date for the 2008 lead nonattainment designations pursuant to CAA section 172(a)(2)(A). Therefore, the Bristol Area's attainment date is December 31, 2015. EPA determined that Tennessee had attained the 2008 lead NAAQS prior to the attainment date and issued a Clean Data Determination on August 29, 2012 (77 FR 52232).

In a notice of proposed rulemaking (NPRM) published on April 26, 2016 (81 FR 24536), EPA proposed to approve four separate but related actions: (1) To approve Tennessee's RACM determination for the Bristol Area pursuant to Clean Air Act (CAA or Act) section 172(c)(1) into the SIP; (2) to determine that the Area is continuing to attain the 2008 lead NAAQS; (3) to approve Tennessee's maintenance plan for maintaining the 2008 lead NAAQS in the Area into the SIP; and (4) to redesignate the Area. No comments were received on the April 26, 2016, proposed rulemaking. The details of Tennessee's submittal and the rationale for EPA's actions are further explained in the NPRM. *See* 81 FR 24536 (April 26, 2016).

II. What are the effects of these actions?

Approval of Tennessee's redesignation request changes the legal designation of the Bristol Area, found at 40 CFR 81.343, from nonattainment to attainment for the 2008 lead NAAQS. Approval of Tennessee's associated SIP revision also incorporates a plan into the SIP for maintaining the 2008 lead NAAQS in the Sullivan County (Bristol Area), Tennessee, through 2025 and a RACM determination for the Area.

III. Final Action

EPA is taking a number of final actions regarding Tennessee's July 15, 2015, request to redesignate the Bristol Area to attainment and associated SIP revision. First, EPA is determining that the State's Subpart 1 RACM determination for the Area meets the requirements of CAA section 172(c)(1) and incorporating this RACM determination into the SIP.

Second, EPA is determining, based upon review of quality-assured and certified ambient monitoring data for the 2012–2014 period and upon review of preliminary data in Air Quality System for 2015, that the Area continues to attain the 2008 lead NAAQS following EPA's August 29, 2012, determination of attainment.

Third, EPA is approving the maintenance plan for the Area and incorporating it into the SIP.

Fourth, EPA is approving Tennessee's request for redesignation of the Area from nonattainment to attainment for the 2008 lead NAAQS. As mentioned above, approval of the redesignation request changes the official designation of the Bristol Area from nonattainment to attainment for the 2008 lead NAAQS.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by State law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: June 22, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

■ 2. In § 52.2220, the table in paragraph (e) is amended by adding the entry "2008 Lead Maintenance Plan for the Bristol Area" at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
*	*	*	*	*
2008 Lead Maintenance Plan for the Bristol Area.	Bristol Area	7/10/2015	7/7/2016 [insert **Federal Register** citation].	

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Section 107 Attainment Status Designations

■ 4. In § 81.343, the table entitled "Tennessee—2008 Lead NAAQS" is amended by revising the entry "Bristol, TN:" to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—2008 LEAD NAAQS

Designated area	Designation for the 2008 NAAQS [a]	
	Date [1]	Type
Bristol, TN: Sullivan County (part) Area is bounded by a 1.25 km radius surrounding the UTM coordinates 4042923 meters E., 386267 meters N., Zone 17, which surrounds the Exide Technologies Facility.	7/7/2016	Attainment
* * *	*	*

[a] Includes Indian Country in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

[FR Doc. 2016–16002 Filed 7–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2014–0866; FRL–9948–65–OAR]

RIN 2060–AS43

Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing amendments to the standards of performance for stationary compression ignition (CI) internal combustion engines to allow manufacturers to design the engines so that operators can temporarily override performance inducements related to the emission control system for stationary CI internal combustion engines. The amendments apply to engines operating during emergency situations where the operation of the engine or equipment is needed to protect human life, and to require compliance with Tier 1 emission standards during such emergencies. The EPA is also amending the standards of performance for certain stationary CI internal combustion engines located in remote areas of Alaska.

DATES: This final rule is effective on September 6, 2016.

ADDRESSES: *Docket:* The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0866. All documents in the docket are listed in the *http://www.regulations.gov* index. The EPA also relies on materials in Docket ID Nos. EPA–HQ–OAR–2008–0708, EPA–HQ–OAR–2010–0295, and EPA–HQ–OAR–2011–1032, and incorporates those dockets into the record for this final rule.

Although listed in the index, some information is not publicly available (*e.g.*, confidential business information or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. Visit the EPA Docket Center homepage at *http://www.epa.gov/dockets* for additional information about the EPA's public docket.

In addition to being available in the docket, an electronic copy of this final rule will be available on the World Wide Web (WWW). Following signature, a copy of this final rule will be posted at the following address: *http://www3.epa.gov/ttn/atw/icengines.*

FOR FURTHER INFORMATION CONTACT: Ms. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2469; facsimile number: (919) 541–5450; email address: *king.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of this document. The information presented in this preamble is organized as follows:

I. General Background
II. Final Amendments
  A. Temporary Override of Inducements in Emergency Situations
  B. Remote Areas of Alaska
III. Public Comments and Responses
  A. Temporary Override of Inducements in Emergency Situations
  B. Remote Areas of Alaska
IV. Impacts of the Final Action
  A. Economic Impacts
  B. Environmental Impacts
V. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review
  B. Paperwork Reduction Act (PRA)
  C. Regulatory Flexibility Act (RFA)
  D. Unfunded Mandates Reform Act (UMRA)
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
  I. National Technology Transfer and Advancement Act (NTTAA)
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act (CRA)

I. General Background

On July 11, 2006, the EPA promulgated standards of performance for stationary CI internal combustion engines (71 FR 39154). These standards, known as new source performance standards (NSPS), implement section 111(b) of the Clean Air Act, and are issued for categories of sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. The standards are codified at 40 CFR part 60 subpart IIII. The standards apply to new stationary sources of emissions, *i.e.*, sources whose construction, reconstruction, or modification begins after a standard for those sources is proposed. The NSPS for stationary CI internal combustion engines established limits on emissions of particulate matter (PM), nitrogen oxides (NO_X), carbon monoxide (CO) and non-methane hydrocarbons (NMHC). The emission standards are generally modeled after the EPA's standards for nonroad and marine diesel engines. The nonroad CI engine standards are phased in over several years and have Tiers with increasing levels of stringency. The engine model year in which the Tiers take effect varies for different size ranges of engines. The Tier 4 final standards for new stationary non-emergency and nonroad CI engines generally begin with either the 2014 or 2015 model year.

In 2011, the EPA finalized revisions to the NSPS for stationary CI engines that amended the standards for engines with a displacement greater than 10 liters per cylinder, and also for engines located in remote areas of Alaska (76 FR 37954, June 28, 2011). In this action, the EPA is finalizing amendments to the NSPS regarding performance inducements for Tier 4 engines and the criteria for defining remote areas of Alaska. The final amendments are discussed below.

II. Final Amendments

A. Temporary Override of Inducements in Emergency Situations

Many Tier 4 final engines are equipped by the engine manufacturer with selective catalytic reduction (SCR) to reduce emissions of NO_X. The consumable reactant in an SCR system is typically supplied as a solution of urea in water known as diesel exhaust fluid (DEF). Engines equipped with SCR generally include controls that limit the function of the engines if they are operated without DEF, or if the engine's electronic control module cannot otherwise confirm that the SCR system is properly operating. Such controls are generally called "inducements" because they induce the operator to properly maintain the SCR emission control system. In normal circumstances, if inducements begin, the engine operator is expected to perform any necessary maintenance to avoid shutdown. Manufacturers as well as owners or operators of nonroad and stationary CI Tier 4 certified engines have raised concerns regarding the inducements being triggered and engines shutting down during emergency situations. Additional background on Tier 4 engines and this amendment can be found in the proposal for this rulemaking (80 FR 68808, November 6, 2015). On August 8, 2014, the EPA promulgated provisions allowing manufacturers of nonroad engines certified to the emission standards in 40 CFR part 1039 to give operators the means to temporarily override emission control inducements during qualified emergency situations, such as those where operation of the engine is needed to protect human life (79 FR 46356, August 8, 2014). These provisions, which are codified in 40 CFR 1039.665, allow for auxiliary emission control devices (AECDs) that help to ensure proper function of engines in qualified emergency situations. AECDs are any element of design that senses temperature, motive speed, engine revolutions per minute, transmission gear, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system. The provisions of 40 CFR 1039.665 allow the engine manufacturer to include a dormant feature in the engine's control software that could be activated to override emission control inducements. In this action, the EPA is adopting those same provisions for stationary CI engines certified to the standards in 40 CFR part 1039 and used in qualified emergency situations. It is important to emphasize that the EPA is confident that Tier 4 engines will function properly in the vast majority of emergency situations. Thus, the EPA expects that AECDs allowed under this provision will rarely be activated. The EPA is adopting this provision merely as a precaution to ensure that stationary CI engines can continue to operate in emergency situations.

The final amendments allow engine manufacturers to design into their stationary CI engines a dormant AECD that can be activated for up to 120 engine hours per use during a qualified emergency situation to prevent emission controls from interfering with engine operation. The EPA is finalizing amendments that allow engine manufacturers to offer, and operators to request, re-activations of the AECD for additional time in increments of 120 engine hours in cases of a prolonged emergency situation. During the emergency situation, the engine must meet the Tier 1 emission standard in 40 CFR 89.112 that applies to the engine's rated power. Operators activating the AECD will be required to report the incident to the engine manufacturers, and engine manufacturers will submit an annual report to the EPA summarizing the use of these AECDs during the prior year. These final amendments are discussed in more detail below.

1. Definition of Qualified Emergency Situation

The EPA is using the definition of qualified emergency situation established in the August 8, 2014, amendments for nonroad engines. This definition is found in the introductory text to 40 CFR 1039.665 and is cross-referenced in the NSPS for stationary CI internal combustion engines, specifically in 40 CFR 60.4204(f). The definition specifies that a qualified emergency situation is one in which the condition of an engine's emission controls poses a significant direct or indirect risk to human life. An example of a direct risk would be an emission control condition that inhibits the performance of an engine being used to rescue a person from a life-threatening situation (for example, providing power to a medical facility during an emergency situation). An example of an indirect risk would be an emission control condition that inhibits the performance of an engine being used to provide electrical power to a data center that routes "911" emergency response telecommunications.

2. Basic AECD Criteria

Section 1039.665 specifies provisions allowing for AECDs that are necessary to ensure proper function of engines and equipment in emergency situations. It also includes specific criteria that the engine manufacturer must meet to ensure that any adverse environmental impacts are minimized. These criteria are cross-referenced in the NSPS for stationary CI engines and are as follows:

- The AECD must be designed so that it cannot be activated more than once without the specific permission of the certificate holder. Reactivation of the AECD must require the input of a temporary code or equivalent security feature.
- The AECD must become inactive within 120 engine hours of becoming active. The engine must also include a feature that allows the operator to deactivate the AECD once the emergency is over.
- The manufacturer must show that the AECD deactivates emission controls (such as inducement strategies) only to the extent necessary to address the expected emergency situation.
- The engine controls must be configured to record in non-volatile electronic memory the total number of activations of the AECD for each engine.
- The manufacturer must take appropriate additional steps to induce operators to report AECD activation and request resetting of the AECD. The EPA recommends including one or more persistent visible and/or audible alarms that are active from the point when the AECD is activated to the point when it is reset.
- The manufacturer must provide purchasers with instructions on how to activate the AECD in emergency situations, as well as information about penalties for overuse.

3. Emission Standards During Qualified Emergency Situations

The EPA is requiring stationary CI engines to meet different emission standards for the very narrow period of operation where there is an emergency situation with a risk to human life and the owner or operator is warned that the inducement is about to occur. The emission standards that apply when the AECD is activated during the qualified emergency situation are the Tier 1 standards in 40 CFR 89.112. Engine manufacturers indicated that meeting the Tier 2 or 3 standards in 40 CFR 89.112 is not feasible because the base engine used in Tier 4 configurations does not have exhaust gas recirculation (EGR), which is the engine design technology used to meet the Tier 2 and 3 standards. The EGR is not needed for Tier 4 because NO_X is controlled by the SCR.[1] The Tier 1 requirement applies only when there is a qualified emergency situation and bypass of inducements is necessary to ensure continued operation of the engine. Once the emergency situation has ended and the AECD is deactivated, the engine must comply with the otherwise applicable emission standard specified in 40 CFR 60.4202. Engine manufacturers must demonstrate that the engine complies with the Tier 1 standard when the AECD is activated when applying for certification of an engine equipped with an AECD.

4. Approval, Recordkeeping and Reporting for Engine Manufacturers

Manufacturers may ask for approval of the use of emergency AECDs at any time; however, the EPA encourages manufacturers to obtain preliminary approval before submitting an application for certification. Otherwise, the EPA's review of the AECD, which may include many unique features, may delay the approval of the application for certification.

The manufacturer is required to keep records to document the use of emergency AECDs until the end of the calendar year 5 years after the onset of the relevant emergency situation. The manufacturer must submit an annual compliance report to the EPA within 90 calendar days of the end of each calendar year in which it authorizes use of an AECD. The annual report must include a description of each AECD activation and copies of the reports submitted by owners or operators (or statements that an owner or operator did not submit a report, to the extent of the manufacturer's knowledge). If an owner or operator fails to report the use of an emergency AECD to the manufacturer, the manufacturer, to the extent it has been made aware of the AECD activation, must send written notification to the operator that failure to meet the submission requirements may subject the operator to penalties.

5. Engine Owner or Operator Requirements

Owners or operators who purchase engines with this dormant feature will receive instructions from the engine manufacturer on how to activate the AECD in qualified emergency situations, as well as information about penalties for overuse. The EPA would consider appropriate use of this feature to be during a situation where operation of a stationary CI engine is needed to protect human life (or where impaired operation poses a significant direct or indirect risk to human life), and temporarily overriding emission controls enables full operation of the equipment. The EPA is adopting this provision to give operators the means to obtain short-term relief one time without the need to contact the engine manufacturer or the EPA. In a qualified emergency situation, delaying the activation to obtain approval could put lives at risk, and would be unacceptable. However, the EPA retains the authority to evaluate, after the fact, whether it was reasonable to judge that there was a significant risk to human life to justify the activation of the AECD. Where the EPA determines that it was not reasonable to judge (1) that there was a significant risk to human life; or (2) that the emission control strategy was curtailing the ability of the engine to perform, the owner or operator may be subject to penalties for tampering with emission controls. The owner or operator requirements also include a specific prohibition on operating the engine with the AECD beyond the time reasonably needed for such operation. The owner or operator may also be subject to penalties for tampering if they continue to operate the engine with the AECD once the emergency situation has ended or the problem causing the emission control strategy to interfere with the performance of the engine has been or can reasonably be fixed. Nevertheless, the EPA will consider the totality of the circumstances when assessing penalties, and retain discretion to reduce penalties where the EPA determines that an owner or operator acted in good faith.

The owner or operator must send a written report to the engine manufacturer within 60 calendar days after activating an emergency AECD. If any consecutive reactivations occur, this report is still due 60 calendar days from the first activation. The report must include:

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[1] See Document ID No. EPA–HQ–OAR–2014–0866–0010.

- Contact name, mail and email addresses, and telephone number for the responsible company or entity.
- A description of the emergency situation, the location of the engine during the emergency, and the contact information for an official who can verify the emergency situation (such as a county sheriff, fire marshal, or hospital administrator).
- The reason for AECD activation during the emergency situation, such as the lack of DEF, or the failure of an emission-related sensor when the engine was needed to respond to an emergency situation.
- The engine's serial number (or equivalent).
- A description of the extent and duration of the engine operation while the AECD was active, including a statement describing whether or not the AECD was manually deactivated after the emergency situation ended.

Paragraph 40 CFR 1039.665(g) specifies that failure to provide this information to the engine manufacturer within the deadline is improper use of the AECD and is prohibited.

B. Remote Areas of Alaska

The EPA is finalizing an amendment to the NSPS for stationary CI internal combustion engines that would align the definition of remote areas of Alaska with the definition currently used in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Reciprocating Internal Combustion Engines, which can be found at 40 CFR part 63, subpart ZZZZ. The amendment specifies that engines in areas that are accessible by the Federal Aid Highway System (FAHS) can be considered remote if each of the following conditions is met: (1) The only connection to the FAHS is through the Alaska Marine Highway System, or the stationary CI engine operation is within an isolated grid in Alaska that is not connected to the statewide electrical grid referred to as the Alaska Railbelt Grid; (2) at least 10 percent of the power generated by the engine on an annual basis is used for residential purposes; and (3) the generating capacity of the facility is less than 12 megawatts, or the engine is used exclusively for backup power for renewable energy. The Alaska Railbelt Grid is defined as the service areas of the six regulated public utilities that extend from Fairbanks to Anchorage and the Kenai Peninsula. These utilities are Golden Valley Electric Association; Chugach Electric Association; Matanuska Electric Association; Homer Electric Association; Anchorage Municipal Light & Power; and the City of Seward Electric System. Background on the provisions related to remote areas of Alaska can be found in the proposal for this rulemaking (80 FR 68808, November 6, 2015).

The following NSPS provisions that currently apply to stationary CI internal combustion engines for engines that are located in areas of Alaska that are not accessible by the FAHS will be extended to stationary CI internal combustion engines located in the areas identified above:

- Exemption for all pre-2014 model year engines from diesel fuel sulfur requirements (see 40 CFR 60.4216(d));
- Allowance for owners and operators of stationary CI engines to use engines certified to marine engine standards, rather than land-based nonroad engine standards (see 40 CFR 60.4216(b));
- No requirement to meet emission standards that would necessitate the use of aftertreatment devices for NO_X, in particular, SCR (emission standards that are not based on the use of aftertreatment devices for NO_X will apply) (see 40 CFR 60.4216(c));
- No requirement to meet emission standards that would necessitate the use of aftertreatment devices for PM until the 2014 model year (see 40 CFR 60.4216(c)); and
- Allowance for the blending of used lubricating oil, in volumes of up to 1.75 percent of the total fuel, if the sulfur content of the used lubricating oil is less than 200 parts per million and the used lubricating oil is "on-spec," *i.e.*, it meets the on-specification levels and properties of 40 CFR 279.11 (see 40 CFR 60.4216(f)).

III. Public Comments and Responses

This section presents a summary of the public comments that the EPA received on the proposed amendments and the responses developed. The EPA received 7 public comments on the proposed rule. The comments can be obtained online from the Federal Docket Management System at *http://www.regulations.gov.*

A. Temporary Override of Inducements in Emergency Situations

Comment: Two commenters supported the proposed amendment to allow manufacturers of stationary CI engines certified to the emission standards in 40 CFR part 1039 to give engine operators the means to temporarily override emission control inducements while operating in qualified emergency situations. One commenter noted the critical need for the proposed amendment to ensure that stationary CI engines, when used in emergency situations, may continue to operate to ameliorate the emergency and protect human life. The commenter noted that the EPA had already adopted the proposed provision for nonroad engines, and that it was essential for stationary engines as well. The commenter also supported the proposed amendment so that engines could be dual-certified for both stationary and nonroad use, which reduces the cost and burden of certification.

Response: No response necessary.

Comment: One commenter supported the proposed definition of an emergency situation. Another commenter stated that the EPA should not impose any limitations on the operating time of an engine during an emergency situation, and noted that in the NESHAP for Stationary Reciprocating Internal Combustion Engines, emergencies are excluded from operating time limitations and should similarly be excluded here. The commenter stated that it is not necessary to newly incorporate a definition of a qualified emergency situation because there are applicable examples of emergency situations already provided in the definition of an emergency stationary internal combustion engine in the NSPS for stationary CI internal combustion engines. The commenter indicated that if the EPA believes it must finalize specific requirements for emergency operations, then the definition of a qualified emergency situation should be revised so that it is more generalized and more applicable to different types of emergency situations which would necessitate the operation of stationary CI engines. According to the commenter, the proposed definition of a qualified emergency situation and the associated examples of indirect and direct risk to human life apply very specifically to nonroad engines that are able to be transported. The commenter urged the EPA to acknowledge that the examples provided in 40 CFR 1039.665 are merely examples, and do not constitute limits on interpreting the definition of a qualified emergency situation for stationary CI engines. The commenter indicated the EPA should clarify that there are other possible emergency situations that might pose a risk to human life, or list additional examples.

Response: The definition of emergency stationary internal combustion engine in the NSPS for stationary CI internal combustion engines, and the similar definition in the NESHAP for Stationary Reciprocating Internal Combustion Engines, defines a subcategory of engines that are subject to different standards, whether operating in an actual emergency or in other limited non-emergency circumstances. The definition of a qualified emergency situation has a different purpose; it defines when the inducement can be overridden for a non-emergency engine. The definition of a qualified emergency situation where an inducement can be overridden is intended to be more limited to emergency situations where there is a significant direct or indirect risk to human life.

The EPA does not agree with the commenter that the proposed definition is not sufficiently generalized and that the examples provided are not representative of stationary engines. One of the examples is "an engine being used to provide electrical power to a data center that routes '911' emergency response telecommunications," which would likely be a stationary generator. The possible scenarios provided in the definition are merely examples and are not intended to be the only types of applications and situations that can qualify. The use of the word "example" in the definition is an indication that they are just examples and not limits on interpreting the definition. It would not be possible to provide examples of all of the potential uses of engines in qualified emergency situations.

Comment: One commenter recommended that the initial period for AECD operation should be 15 days (360 hours) rather than the proposed 120 hours, with follow-on increments of 120 hours activated by communications with the engine certificate holder. The commenter stated that the time limit should be designed to address a worst-case situation, such as a region-wide disaster and a remote area, where extended communications and/or supply chain disruptions may impact the engine operator and the certificate holder beyond 120 hours. According to the commenter, the threat of post-emergency analysis and punishment by the EPA will likely be sufficient to minimize overuse of the leeway provided by the proposed amendment.

Another commenter opposed any hour limit during an emergency situation. According to the commenter, because emergencies are sudden, uncontrollable, and unlikely, there is no need to limit the amount of override time allowable to keep engines running during emergencies. The commenter also expressed concern about the procedures set forth for reactivation of the AECD, and urged the EPA to remove the requirements for resetting of the AECD. The commenter stated that the engine manufacturer is not the appropriately qualified entity to determine a facility's qualified emergency, and that there need not be such stringent requirements for activation of the AECD, since the EPA has the authority to evaluate after the fact whether or not it was reasonable to justify the qualified emergency.

Response: The proposed definition of a qualified emergency situation specifies emergency situations for which an engine owner or operator may temporarily override emission control inducements. Should the engine owner or operator need to extend the override beyond the initial 120 hour period, it can work with the engine manufacturer to reset the AECD for additional time. Thus, the engine owner/operator will be able to override the emission controls throughout the duration of the qualified emergency situation. The limit on AECD activation periods and procedures for resetting the AECD are necessary to ensure that the time of the override is truly limited to the time necessary to address the emergency situation, and minimize excess emissions, which would lead to adverse environmental impacts. The commenters that suggested an initial 360 hour AECD activation period to address a "worst case scenario" or an unlimited activation period did not provide any specific example of a qualified emergency situation of longer than 120 hours where the procedures for resetting the AECD could not have been followed, or explain why 360 hours represents a "worst case scenario." The EPA's approach appropriately balances the need to provide regulatory relief in emergency circumstances with the need to deter overuse, and the EPA does not agree that an unlimited period is necessary or that a period of 360 hours or unlimited hours is preferable. In order to reactivate the AECD, the engine manufacturer is only required to have evidence that the emergency situation is continuing and is not required to judge if the situation is a qualifying emergency. As indicated in the proposal, it is expected that AECDs would be activated rarely, if ever, so the provisions are unlikely to impose a significant burden on engine owners/operators.

Further, the EPA's decision to adopt requirements concerning initial AECD activation periods, reactivation and notification that are identical to such requirements in the nonroad engine rules is influenced by our desire to allow for dual certification of stationary and nonroad engines, which reduces the burden of the rule on engine manufacturers. The Truck and Engine Manufacturers Association noted in their public comments[2] that the ability to dual certify nonroad and stationary engines reduces the number of engine families that a manufacturer must certify, reduces the number of engine models that dealers, distributors, and customers must inventory and manage, and reduces the number of engine families that the EPA must certify. According to the commenter, if the EPA were to foreclose the ability of manufacturers to continue to dual certify, significant costs and burdens would result. Given that the NSPS for stationary CI internal combustion engines places a great deal of the compliance demonstration burden on the engine manufacturer, it is reasonable to have the manufacturer's compliance obligations be as consistent as possible for stationary and nonroad engines.

Comment: One commenter supported the recordkeeping process outlined in the proposed rule. Another commenter disagreed with the proposed requirements for the engine owner/operator to send a written report to the engine manufacturer detailing the activation of the emergency AECD. According to the commenter, the engine manufacturer has no authority to enforce penalties or regulations promulgated by the EPA, and, therefore, the commenter did not think it made logical sense for owners/operators to be required to submit reports to the engine manufacturers, nor are the engine manufacturers qualified to determine what constitutes a qualified emergency situation at the affected facility. The commenter stated that using the engine manufacturers to collect reports and then report this information to the EPA is unprecedented and creates an unnecessary middleman. The commenter recommended that the proposed provisions be revised so that owners/operators are required to report the information directly to the EPA, or to the appropriate permitting authority.

Response: Similar to the limit on AECD activation periods and the procedures for resetting the AECD, the recordkeeping process is necessary to ensure the AECD is used in true emergencies only and prevent adverse environmental impacts. The proposed reporting provisions do not require engine manufacturers to enforce penalties or EPA regulations. Rather, they require that, in cases where the manufacturer is aware of use of the AECD, the manufacturer must make the engine owner/operator aware that they may be subject to penalties from the EPA for failing to report the use of the AECD. There are other situations in the regulations where an engine manufacturer is required to indicate that an owner/operator may be subject to penalties, such as the labeling requirement in 40 CFR 1039.20. The commenter did not provide any information to show that it would be unreasonable for engine manufacturers to compile information on the use of AECDs, and the engine manufacturers have not objected to the requirement. As stated previously, it is expected that AECDs will be activated rarely, if ever, so the reporting provisions are unlikely to impose a significant burden on engine owners/operators or engine manufacturers.

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[2] EPA–HQ–OAR–2014–0866–0017.

Comment: One commenter requested that the EPA clarify that manufacturers are not required to submit actual certification test-based data to demonstrate that engines equipped with an AECD that helps to ensure proper function of engines in qualified emergency situations will meet the Tier 1 emission standards in 40 CFR 89.112 when the AECD is activated. According to the commenter, submittal of certification test-based data would be unduly expensive and burdensome for engine manufacturers and the EPA. The commenter recommended that engine manufacturers be allowed to demonstrate that an engine complies with the Tier 1 emission standards when the AECD is activated by submitting the conversion efficiencies for the Tier 4 engine's emission control systems and using good engineering judgement to demonstrate that the engine complies with the Tier 1 standard. Specifically, according to the commenter, manufacturers could compare the conversion efficiency with the Tier 4 emission standard for the engine to demonstrate that the engine would meet the Tier 1 emission standard if the emission control system is disabled. The commenter noted that the EPA allows the demonstration of compliance through means other than the generation of actual certification data for the not-to-exceed standards in part 1039. The commenter suggested specific edits to 40 CFR 60.4210(j) to help clarify the required demonstration.

Response: The proposed rule was not intended to require certification test-based data to be submitted to demonstrate that the engines will meet the Tier 1 emission standards. The final rule includes language in 40 CFR 60.4210(j) to clarify that certification test-based data are not required for such demonstration. The intent of the provision is that engine manufacturers would demonstrate achievement of the Tier 1 emission standards at the time that the manufacturer applies for certification of the engine equipped with an AECD. Manufacturers must document that the engine complies with the Tier 1 emission standards when the AECD is activated and provide any relevant testing, engineering analysis, or other information in sufficient detail to support such statement when applying for certification (or amending an existing certificate) of an engine equipped with an AECD.

B. Remote Areas of Alaska

Comment: Four commenters supported the proposed amendment to align the definition of remote areas of Alaska in the NSPS for stationary CI engines with the definition currently used in the NESHAP for Stationary Reciprocating Internal Combustion Engines. Commenters indicated that the proposed amendment would address the unique circumstances of engines located in remote areas of Alaska. No commenters opposed the proposed amendment.

Response: No response necessary.

Comment: One commenter requested that the EPA reconsider the effectiveness of, and need for, PM emission control equipment on new Tier 3 marine engines providing prime power in remote areas of Alaska. The commenter questioned the benefit of installing PM emission controls on engines certified to the Tier 3 marine engine standards, which have lower PM emissions than engines certified to the Tier 3 standards for nonroad engines. The commenter stated that it believes that the capital and operating cost, questionable reliability, and additional complexity resulting from the PM emission control requirement do not appear to be warranted or economically viable.

Response: This comment is outside the scope of the proposal, which did not seek comment on the appropriateness of the PM emission control requirement in 40 CFR 61.4216(c) for remote areas of Alaska.

IV. Impacts of the Final Action

A. Economic Impacts

The EPA does not expect any significant economic impacts as a result of this final rule. A significant economic impact for the amendment allowing the temporary override of inducements in emergency situations is not anticipated because AECDs are expected to be activated rarely (if ever), and, thus, the impacts to affected sources and consumers of affected output will be minimal.

The economic impact from the change to the criteria for remote areas of Alaska will be a cost savings for owners or operators of engines that are located in the additional areas that will now be considered remote. The precise savings depends on the number and size of engines that will be installed each year. Information provided by the Alaska Energy Authority indicated that one to two new engines are expected to be installed each year. Information provided by the state of Alaska indicated that the expected initial capital cost savings per engine ranges from $28,000 to $163,000, depending on the size of the engine. There will also be annual operating and maintenance cost savings due to avoidance of the need to obtain and store DEF.

B. Environmental Impacts

The EPA does not expect any significant environmental impacts as a result of the amendment to allow a temporary override of inducements in emergency situations. The AECDs are expected to be activated rarely (if ever) and will only affect emissions for a very short period.

The EPA also does not expect significant environmental impacts as a result of the amendments to the criteria for remote areas of Alaska. As an example, allowing the use of a Tier 3 engine instead of a Tier 4 engine would result in less reductions for a 250 horsepower (HP) stationary CI engine of 5.4 tons per year (tpy) of NO_X, 0.1 tpy of NMHC, 1.6 tpy of CO, and 0.3 tpy of PM, assuming the engine operates full time (8,760 hours per year).[3] As stated previously, the state of Alaska estimates that only one to two new engines will be installed each year in the additional remote areas.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

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[3] Estimates are based on Tier 3 and Tier 4 emission factors for a 175–300 HP engine provided in Table A4 of Exhaust and Crankcase Emission Factors for Nonroad Engine Modeling—Compression-Ignition. NR–009d. Assessment and Standards Division, Office of Transportation and Air Quality. U.S. Environmental Protection Agency. EPA–420–R–10–018. July 2010. *http://www.epa.gov/otaq/models/nonrdmdl/nonrdmdl2010/420r10018.pdf.*

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2196.05. The only new information collection activity in this rule is the reporting by engine owners and operators and engine manufacturers that would occur if the AECD is activated during a qualified emergency situation. The EPA expects that it is unlikely that these AECDs will ever need to be activated. Therefore, the EPA estimates that there will be no additional burden from this reporting requirement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0590.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. As mentioned earlier in this preamble, the EPA is harmonizing the NSPS for stationary CI engines in this action with an existing rule issued by the EPA for nonroad CI engines. Thus, this action is reducing regulatory impacts to small entities as well as other affected entities. The EPA is also including additional remote areas of Alaska in the regulatory flexibility provisions already in the rule for remote areas of Alaska, which further reduces the burden of the existing rule on small entities and other affected entities. We have, therefore, concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This final rule would impose compliance costs primarily on engine manufacturers, depending on the extent to which they take advantage of the flexibilities offered. The final amendments to expand the areas that are considered remote areas of Alaska would reduce the compliance costs for owners and operators of stationary engines in those areas. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The provisions being finalized in this action are designed to eliminate risks to human life and are expected to be used rarely, if at all, and will only affect emissions for a very short period. Other changes the EPA is finalizing have minimal effect on emissions.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 28, 2016.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of the Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

■ 2. Amend § 60.4201 by revising paragraph (f)(1) and adding paragraph (h) to read as follows:

§ 60.4201 What emission standards must I meet for non-emergency engines if I am a stationary CI internal combustion engine manufacturer?

* * * * *

(f) * * *

(1) Remote areas of Alaska; and

* * * * *

(h) Stationary CI ICE certified to the standards in 40 CFR part 1039 and equipped with auxiliary emission control devices (AECDs) as specified in 40 CFR 1039.665 must meet the Tier 1 certification emission standards for new nonroad CI engines in 40 CFR 89.112 while the AECD is activated during a qualified emergency situation. A qualified emergency situation is defined in 40 CFR 1039.665. When the qualified emergency situation has ended and the AECD is deactivated, the engine must resume meeting the otherwise applicable emission standard specified in this section.

■ 3. Amend § 60.4202 by revising paragraph (g)(1) to read as follows:

§ 60.4202 What emission standards must I meet for emergency engines if I am a stationary CI internal combustion engine manufacturer?

* * * * *

(g) * * *

(1) Remote areas of Alaska; and

* * * * *

■ 4. Amend § 60.4204 by adding paragraph (f) to read as follows:

§ 60.4204 What emission standards must I meet for non-emergency engines if I am an owner or operator of a stationary CI internal combustion engine?

* * * * *

(f) Owners and operators of stationary CI ICE certified to the standards in 40 CFR part 1039 and equipped with AECDs as specified in 40 CFR 1039.665 must meet the Tier 1 certification emission standards for new nonroad CI engines in 40 CFR 89.112 while the AECD is activated during a qualified emergency situation. A qualified emergency situation is defined in 40 CFR 1039.665. When the qualified emergency situation has ended and the AECD is deactivated, the engine must resume meeting the otherwise applicable emission standard specified in this section.

■ 5. Amend § 60.4210 by adding paragraph (j) to read as follows:

§ 60.4210 What are my compliance requirements if I am a stationary CI internal combustion engine manufacturer?

* * * * *

(j) Stationary CI ICE manufacturers may equip their stationary CI internal combustion engines certified to the emission standards in 40 CFR part 1039 with AECDs for qualified emergency situations according to the requirements of 40 CFR 1039.665. Manufacturers of stationary CI ICE equipped with AECDs as allowed by 40 CFR 1039.665 must meet all of the requirements in 40 CFR 1039.665 that apply to manufacturers. Manufacturers must document that the engine complies with the Tier 1 standard in 40 CFR 89.112 when the AECD is activated. Manufacturers must provide any relevant testing, engineering analysis, or other information in sufficient detail to support such statement when applying for certification (including amending an existing certificate) of an engine equipped with an AECD as allowed by 40 CFR 1039.665.

■ 6. Amend § 60.4211 by adding paragraph (h) to read as follows:

§ 60.4211 What are my compliance requirements if I am an owner or operator of a stationary CI internal combustion engine?

* * * * *

(h) The requirements for operators and prohibited acts specified in 40 CFR 1039.665 apply to owners or operators of stationary CI ICE equipped with AECDs for qualified emergency situations as allowed by 40 CFR 1039.665.

■ 7. Amend § 60.4214 by adding paragraph (e) to read as follows:

§ 60.4214 What are my notification, reporting, and recordkeeping requirements if I am an owner or operator of a stationary CI internal combustion engine?

* * * * *

(e) Owners or operators of stationary CI ICE equipped with AECDs pursuant to the requirements of 40 CFR 1039.665 must report the use of AECDs as required by 40 CFR 1039.665(e).

■ 8. Amend § 60.4216 by revising paragraphs (b) through (d) and (f) to read as follows:

§ 60.4216 What requirements must I meet for engines used in Alaska?

* * * * *

(b) Except as indicated in paragraph (c) of this section, manufacturers, owners and operators of stationary CI ICE with a displacement of less than 10 liters per cylinder located in remote areas of Alaska may meet the requirements of this subpart by manufacturing and installing engines meeting the requirements of 40 CFR parts 94 or 1042, as appropriate, rather than the otherwise applicable requirements of 40 CFR parts 89 and 1039, as indicated in §§ 60.4201(f) and 60.4202(g).

(c) Manufacturers, owners and operators of stationary CI ICE that are located in remote areas of Alaska may choose to meet the applicable emission standards for emergency engines in §§ 60.4202 and 60.4205, and not those for non-emergency engines in §§ 60.4201 and § 60.4204, except that for 2014 model year and later non-emergency CI ICE, the owner or operator of any such engine that was not certified as meeting Tier 4 PM standards, must meet the applicable requirements for PM in §§ 60.4201 and 60.4204 or install a PM emission control device that achieves PM emission reductions of 85 percent, or 60 percent for engines with a displacement of greater than or equal to 30 liters per cylinder, compared to engine-out emissions.

(d) The provisions of § 60.4207 do not apply to owners and operators of pre-2014 model year stationary CI ICE subject to this subpart that are located in remote areas of Alaska.

* * * * *

(f) The provisions of this section and § 60.4207 do not prevent owners and operators of stationary CI ICE subject to this subpart that are located in remote areas of Alaska from using fuels mixed with used lubricating oil, in volumes of up to 1.75 percent of the total fuel. The sulfur content of the used lubricating oil must be less than 200 parts per million. The used lubricating oil must meet the on-specification levels and properties for used oil in 40 CFR 279.11.

■ 9. Amend § 60.4219 by adding in alphabetical order the definitions for "*Alaska Railbelt Grid*" and "*Remote areas of Alaska*" to read as follows:

§ 60.4219 What definitions apply to this subpart?

* * * * *

Alaska Railbelt Grid means the service areas of the six regulated public utilities that extend from Fairbanks to Anchorage and the Kenai Peninsula. These utilities are Golden Valley Electric Association; Chugach Electric Association; Matanuska Electric Association; Homer Electric Association; Anchorage Municipal Light & Power; and the City of Seward Electric System.

* * * * *

Remote areas of Alaska means areas of Alaska that meet either paragraph (1) or (2) of this definition.

(1) Areas of Alaska that are not accessible by the Federal Aid Highway System (FAHS).

(2) Areas of Alaska that meet all of the following criteria:

(i) The only connection to the FAHS is through the Alaska Marine Highway System, or the stationary CI ICE operation is within an isolated grid in Alaska that is not connected to the statewide electrical grid referred to as the Alaska Railbelt Grid.

(ii) At least 10 percent of the power generated by the stationary CI ICE on an annual basis is used for residential purposes.

(iii) The generating capacity of the source is less than 12 megawatts, or the stationary CI ICE is used exclusively for backup power for renewable energy.

* * * * *

[FR Doc. 2016–16045 Filed 7–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R01–OW–2016–0068; FRL–9948–61–Region 1]

Ocean Disposal; Amendments to Restrictions on Use of Dredged Material Disposal Sites in the Central and Western Regions of Long Island Sound; Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending federal regulations that designated, and placed restrictions on the use of, the Central Long Island Sound and Western Long Island Sound dredged material disposal sites, located offshore from New Haven and Stamford, Connecticut, respectively. The amended regulations incorporate standards and procedures for the use of those sites consistent with those recommended in the Long Island Sound Dredged Material Management Plan, which was completed by the U.S. Army Corps of Engineers on January 11, 2016. The Dredged Material Management Plan identifies a wide range of alternatives to open-water disposal and recommends standards and procedures for determining which alternatives to pursue for different dredging projects, so as to reduce or eliminate the open-water disposal of dredged material.

DATES: This final regulation is effective on August 8, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OW–2016–0068. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Publically available docket materials are also available from EPA's Web site *https://www.epa.gov/ocean-dumping/dredged-material-management-long-island-sound.*

FOR FURTHER INFORMATION CONTACT: Stephen Perkins, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square, Suite 100, Mail Code: OEP06–3, Boston, MA 02109–3912, telephone (617) 918–1501, electronic mail: *perkins.stephen@epa.gov.*

SUPPLEMENTARY INFORMATION: Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background
II. Response to Comments
III. Changes From the Proposed Rule
IV. Compliance With Statutory and Regulatory Requirements
V. Final Action
VI. Statutory and Executive Order Reviews

I. Background

On February 10, 2016, EPA published in the **Federal Register** (81 FR 7055) a proposed rule (the Proposed Rule) amending federal regulations that designated, and placed restrictions on the use of, the Central Long Island Sound (CLDS) and Western Long Island Sound (WLDS) dredged material disposal sites, located offshore from New Haven and Stamford, Connecticut, respectively. The existing restrictions on the sites were imposed when EPA designated CLDS and WLDS (70 FR 32498) (the 2005 Rule), to ensure appropriate use and management of the designated disposal sites and to support the common goal of New York and Connecticut to reduce or eliminate the disposal of dredged material in Long Island Sound.

To support this goal, the restrictions in the 2005 Rule contemplated that there would be a regional dredged material management plan (DMMP) for Long Island Sound that would help to guide the management of dredged material from projects which occur after completion of the DMMP. The amended restrictions in this Final Rule incorporate standards and procedures for the use of those sites consistent with those recommended in the Long Island Sound DMMP, which was completed by the U.S. Army Corps of Engineers (USACE) on January 11, 2016.

The restrictions imposed on the sites in the 2005 Rule also included conditions that specified that use of the sites would be suspended if, within 120 days of completion of the DMMP, and subject to EPA's consideration of public comments, EPA does not issue legally binding final amendments adopting such procedures and standards. Any such suspension in the use of the sites would be lifted if and when EPA issues the required final rule.

II. Response to Comments

EPA received comments on the Proposed Rule from 119 individuals, groups or entities. Comments were received from the Connecticut Congressional Delegation, USACE, the states of Connecticut and New York, a number of municipalities, environmental groups, harbor and marine trade groups, and many private citizens. Approximately eighty percent of the commenters supported the Proposed Rule, with some offering suggested improvements. The remainder expressed opposition in part or in whole to the Proposed Rule. A document containing copies of all of the public comments received by EPA and a document containing EPA's response to each of the comments have been placed in the public docket and on the Web site identified in the **ADDRESSES** section of this document. There was significant overlap among the comments received. Below, EPA summarizes the main points of the commenters and provides responses.

Comment #1. A number of commenters, including the states of Connecticut and New York, asked that EPA be explicit in retaining the common goal of the 2005 Rule—to reduce or eliminate open-water disposal of dredged material in Long Island Sound.

Response #1. EPA did not intend to signal any change to the goal of the 2005 Rule. In fact, the goal was so stated in the first paragraph of the Background section of the Proposed Rule. EPA did not include the goal statement in the proposed regulations because it was previously included in a provision addressing development of the DMMP and EPA deleted that provision because the DMMP had been completed. Again, EPA did not by this deletion intend to signal a change in the goal. Therefore, to address this comment, EPA has added a sentence, restating the common goal, in the introductory paragraph (b)(4)(vi) in the Final Rule.

Comment #2. The states of Connecticut and New York proposed similar ideas for revisions to the Proposed Rule intended to spur increased beneficial use and result in staged reductions in open water disposal of dredge material over time. The suggested revisions include creation of a Steering Committee, consisting of high level representatives from the states, EPA and USACE. The comments propose that the charge to the Steering Committee would be to develop a baseline for the amount of dredged material being placed in open water and the amount being beneficially used, and to establish a reasonable and practicable series of stepped objectives (with timeframes) for reducing the amount of open-water placement and increasing the amount of beneficially used material, while also recognizing that there will be fluctuations in annual volumes of dredged material generated due to the very nature of the dredging program. The comments also call for the stepped objectives to incorporate an adaptive management approach toward continuous improvement, and for the charge to the Steering Committee also to include developing accurate methods to track reductions, with due consideration for annual fluctuations in the amount of dredging, and reporting on progress. The comments suggest that when tracking progress, it would be recognized that exceptional circumstances may result in delays in meeting an objective. Exceptional circumstances should be infrequent, irregular and unforeseeable. Certain other commenters also supported the inclusion of a staged reduction in open-water disposal.

Response #2. EPA agrees with Connecticut and New York that it would be useful to formally establish the Long Island Sound Steering Committee (Steering Committee), consisting of high level representatives from the two states, EPA, USACE, and, as appropriate, other federal and state agencies. A Steering Committee, consisting of the same parties, was established previously to guide the development of the DMMP and has provided a useful forum for interagency collaboration on dredged material management in the Long Island Sound region. Other participants could include the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS), which had a seat on the previous Steering Committee, and the state of Rhode Island, which had a seat on the previous Long Island Sound Regional Dredging Team (LIS RDT), and may have more interest now that the LIS RDT's geographic scope includes eastern Long Island Sound. Consistent with the comments, the Final Rule includes a provision establishing a Steering Committee to provide policy-level direction to the LIS RDT and facilitate high-level collaboration among the agencies critical to accelerating the development and use of beneficial alternatives for dredged material.

The charge to the Steering Committee includes: Developing a baseline for the volume and percentage of dredged material being placed in open water and the volume and percentage being beneficially used; establishing a reasonable and practicable series of stepped objectives (with timeframes) for reducing the amount of dredged material placed in open-water sites and increasing the amount of material that is beneficially used, while also recognizing that there will be fluctuations in annual volumes of dredged material generated due to the very nature of the dredging program; and developing methods for accurately tracking reductions with due consideration for annual fluctuations. EPA agrees, and has provided, that the stepped objectives should incorporate an adaptive management approach toward continuous improvement. The Final Rule also provides that, when tracking progress, the Steering Committee will recognize that exceptional circumstances may result in delays in meeting an objective, and that exceptional circumstances should be infrequent, irregular and unpredictable. In carrying out its tasks, the Steering Committee will guide and utilize the LIS RDT, as appropriate.

To be clear, neither the 2005 Rule nor the new amendments to the Rule *require* or *command* either Connecticut or New York (or Rhode Island) to participate on the Steering Committee or the LIS RDT. Participation by the states is voluntary. That said, EPA expects that the states will choose to participate on the Steering Committee and the LIS RDT. This expectation is based on several factors: (1) Connecticut and New York both commented in favor of constituting a Steering Committee and LIS RDT as discussed above; (2) the Steering Committee and LIS RDT will provide a dedicated venue for federal/state inter-agency communication and collaboration on dredging and dredged material disposal projects of interest and these sorts of discussions already take place and are often necessary due to the legal and programmatic responsibilities of the various agencies; and (3) New York, Connecticut, and Rhode Island participated on the LIS RDT created under the 2005 Rule and New York and Connecticut participated on the Steering Committee associated with development of the DMMP. Given that EPA anticipates that Connecticut and New York, and possibly Rhode Island, will voluntarily participate on the Steering Committee and the LIS RDT, EPA also expects that each of the agencies will commit the necessary resources to make that participation on the Steering Committee and LIS RDT meaningful, including resources needed to support collection of data for establishing the baseline and tracking and reporting on the future disposition of dredged materials.

Comment #3. Some commenters encouraged giving increased attention to implementation, as distinguished from simply identification, of feasible alternatives, and encouraged funding demonstration/pilot programs for alternative methods of beneficial use. They noted the importance of the states and all stakeholders working together to find and promote alternative uses for dredged material and encouraged the states to amend regulations to facilitate beneficial, environmentally sound use of suitable materials upland. The states of Connecticut and New York expressed their commitment to working with federal and state partners to develop and promote the use of innovative and practicable alternatives to open water disposal. Activities that may facilitate and establish a path forward include committing to jointly implement two pilot projects, identifying possible resources, and removing regulatory hurdles.

Response #3. EPA agrees with the commenters that a concerted, collaborative effort among state and federal partners will be needed to spur greater use of beneficial alternatives, including piloting alternatives, identifying possible resources, and eliminating regulatory barriers, when appropriate. EPA believes the Steering Committee should guide these efforts, with the support of the LIS RDT, and has included this among the responsibilities of the Steering Committee and LIS RDT in the Final Rule.

Comment #4. The states of Connecticut and New York expressed support for EPA's proposal to charge the LIS RDT to review each project and require beneficial use of dredged material, where practicable, utilizing the EPA definition of practicable. They felt it was important to note that the LIS RDT should be consulted starting in the early stages of project planning for consideration of beneficial use opportunities.

Response #4. EPA agrees that the LIS RDT will be most effective in its role reviewing dredging projects if it is actively encouraging beneficial use alternatives and if there is an expectation that dredging project proponents should consult with the LIS RDT early in the process of planning a project to have a full view of possible alternatives for their project. The Final Rule contains language clarifying this aspect of the LIS RDT review process. It also should be noted that the LIS RDT makes recommendations to the USACE; the LIS RDT does not directly "require" that dredged material be managed in any particular way.

In response to this comment and Comment #5 below, the Final Rule clarifies certain of the roles and expectations of the LIS RDT. It establishes the relationship between the Steering Committee, which provides policy-level direction to the LIS RDT, and the LIS RDT, which has the responsibility for execution. It also provides additional detail on the organization and procedures for the LIS RDT. EPA views the charter under which the LIS RDT has operated during the development of the DMMP as a useful starting point for a new charter that encompasses the new roles, responsibilities, and makeup of the LIS RDT. The current LIS RDT charter will serve as the interim guide for the LIS RDT's process until a new charter is developed.

Comment #5. USACE believes the role of the LIS RDT should be one of an informational resource and collaborator rather than a body charged with providing "recommendations" to the Corps. They raised concerns regarding whether the role of the LIS RDT is in compliance with the Federal Advisory Committee Act (FACA) since it is required to provide "recommendations" to the USACE.

Response #5. EPA notes that the 2005 Rule established the LIS RDT and charged it with making "recommendations" until the completion of the DMMP. The Proposed Rule incorporated the same language in providing for the LIS RDT to continue into the future. The "recommendations" of the LIS RDT are not formal decisions subject to appeal, but, rather, are advice to the USACE as to how the LIS RDT thinks particular dredged material should be managed. The LIS RDT will attempt to make consensus recommendations to the USACE, but if consensus cannot be achieved, individual LIS RDT member agencies may offer their own comments through the standard regulatory process. Presumably, recommendations will be based upon whether or not the LIS RDT (or an individual agency) believes it has identified one or more practicable alternatives to open-water disposal for a particular project.

Recommendations from the LIS RDT or its members are not binding upon the USACE, EPA or any other state or federal agency. While the USACE must fully consider the recommendations, EPA does not intend for the LIS RDT to in any way usurp the USACE's authority to make independent decisions regarding the placement of dredged material. At the same time, the USACE's decisions regarding whether to authorize dredged material disposal under the MPRSA continue to be subject to EPA review and concurrence under Section 103(c) of the MPRSA, 33 U.S.C. 1413(c), and 40 CFR 225.2. While EPA will also consider recommendations of the LIS RDT or its members, EPA also does not intend for the LIS RDT to in any way usurp EPA's authority to make independent decisions in its review of USACE decisions regarding whether to authorize the open-water disposal of dredged material.

EPA does not intend for the LIS RDT, in the exercise of its responsibility to review projects, to unduly delay the USACE's decision-making. EPA expects that the LIS RDT will report to the USACE on its review of specific projects within 30 days of receipt of project information. If the LIS RDT fails to report to the USACE in this timeframe, the USACE may proceed with its permit decision process. The Final Rule contains language clarifying this point.

Regarding USACE's concerns about the FACA, EPA has carefully reviewed the roles of the LIS RDT and Steering Committee as contained in the Final Rule and finds that the LIS RDT and Steering Committee are exempt from the FACA under 2 U.S.C. 1534(b). *See also* Memorandum by the Office of Management and Budget (OMB) entitled, "SUBJECT: Guidelines and Instructions for Implementing Section 204, 'State, Local, and Tribal Government Input,' of Title II of P.L. 104–4" (Sept. 21, 1995). At the same time, creating federal/state committees such as the LIS RDT and Steering Committee to share information and advice and recommendations is also consistent with the FACA and relevant implementing guidance from OMB.

Comment #6. New York State requested that, to provide additional "surety" that the goal of reducing or eliminating open water disposal is met, an additional provision be included in the rule to provide that if there is an initial failure to maintain or reduce the amount of disposal over the next ten years, as measured at year 10, then the rule can be re-opened upon a petition to EPA.

Response #6. EPA is confident that the restrictions contained in today's Final Rule will be sufficient to make progress toward the goal of reducing or eliminating open-water disposal. However, if the volume of dredged material disposed of at the sites, as measured ten years from now, has increased, it may be an indication that the standards and procedures contained in the Final Rule have not succeeded as intended. Alternatively, it may indicate that despite successful efforts to maximize dredged material management by methods other than open-water disposal, it is even more difficult to identify or develop such alternative methods of dredged material management than is currently anticipated. In either case, EPA agrees that it is reasonable to include an explicit provision in the Final Rule that provides any party with the opportunity under these circumstances to petition EPA to amend the regulations. EPA has added paragraph (b)(4)(vi)(H) to the Final Rule, to provide for this. EPA has not, however, prejudged whether it will find any regulatory amendments to be appropriate. EPA will assess and decide upon any such petition based on the facts and law prevailing at the time of the petition.

Comment #7. Several commenters noted that cost should not be the overwhelming factor in the decision-making process. In their view, cost seems only assigned to beneficial use. They believe cost and potential funding mechanisms for greater use of alternatives should be included.

Response #7. Cost is a very important component of the decision-making process. USACE is constrained by statute, regulation, and policies that govern what they can use federal funds for. The Federal Base Plan for any particular project is defined as the least cost, environmentally acceptable alternative for constructing the project that is consistent with sound engineering practices. Thus, projects are planned, designed and constructed in a manner that efficiently uses very limited federal fiscal resources and that meets applicable environmental standards. The term Federal Standard is often used synonymously with Federal Base Plan, and is defined in USACE regulations as the least costly dredged material placement alternative identified by the USACE that is consistent with sound engineering practices and meets the environmental standards established by EPA's Clean Water Act (CWA) § 404(b)(1) guidelines evaluation process or EPA's ocean dumping criteria under the MPRSA. [33 CFR 335.7] *See also* 33 CFR 336.1(c)(1).

If a beneficial use is selected for a project and that beneficial use happens to be (or be part of) the Federal Base Plan option for the project, the costs of that beneficial use are assigned to the navigational purpose of the project. Beneficial use project costs exceeding the cost of the Federal Base Plan (Federal Standard) option become either a shared federal and non-federal responsibility, or entirely a non-federal responsibility, depending on the type of beneficial use and the applicability of federal funding authority.

The DMMP makes clear the USACE's willingness to use the authorities available to it to pay for what it lawfully can. The authorities that allow USACE to pursue alternatives beyond the Base Plan all require some prescribed percentage of non-federal cost-sharing. Identifying future sources of non-federal cost sharing is one of the important challenges for the Steering Committee and LIS RDT.

Beyond trying to find funding sources for costs above the Federal Standard, another important role for the LIS RDT is to identify incentives and remove barriers to beneficial use such that the cost of alternatives becomes more competitive with open-water disposal. It has become clear in recent years that sandy dredged material is a valuable commodity, especially along New England's beachfronts. Thus there are economic as well as environmental factors that result in most suitable sandy dredge material being used beneficially, principally for beach and nearshore bar nourishment. The next challenge is to find economic and beneficial environmental uses for suitable silty material. As coastal resiliency becomes an increasingly important priority, EPA is hopeful that, and thinks that there is a good chance that, opportunities for beneficial uses of silty material will emerge and expand.

Comment #8. USACE expressed concern that the Proposed Rule could have a significant adverse impact on federal navigation by potentially adding significant costs to USACE projects. Specifically, the USACE is concerned that a scenario could arise where a practicable alternative is identified that exceeds the Federal Standard and therefore would require a non-federal sponsor to fund the difference in cost. If a non-federal sponsor could not do so or refused to do so, disposal at the CLDS or WLDS would then be prohibited and the project could not go forward because of the existence of a practicable alternative to open-water disposal. As such, this provision of the Proposed Rule would impact the USACE's application of the Federal Standard and negatively impact maintenance of Federal Navigation Projects in Long Island Sound. The USACE also expressed a related concern that the requirement that any practicable alternative be fully utilized for the maximum volume of material practicable could require USACE to dispose of material at more than one location, potentially adding significant cost.

The concern about the possibility that a project might not go forward was echoed by the Connecticut Congressional Delegation. In order to effectively maintain the balance between environmental and economic benefits of Long Island Sound, they urged that some certainty regarding the potential cost of maintenance projects must be included in the final language. Knowing the makeup of dredged material from each navigation project is different, they understand that placement alternatives need to be examined on a case-by-case basis. They noted that EPA itself recognizes in the Proposed Rule that the lack of clarity on future project costs "could result in deferral of maintenance or improvement projects that could impact navigation." The delegation expressed hope that the Final Rule will more clearly address this issue.

Response #8. The term "practicable alternative" is defined in 40 CFR 227.16(b) of EPA's MPRSA regulations as an alternative that is "available at reasonable incremental cost and energy expenditures, [and] which need not be competitive with the costs of ocean dumping, taking into account the environmental benefits derived from such activity, including the relative adverse environmental impacts associated with the use of alternatives to ocean dumping." The definition has been part of the restrictions on the CLDS and WLDS since the 2005 Rule (compare (b)(4)(vi)(I)(1) and (2) in the 2005 Rule with (b)(4)(vi)(C)(1) and (2) in the Proposed Rule). The accompanying discussions in the preamble of the 2005 Rule and the Proposed Rule are essentially the same. In the nearly eleven years that the restrictions have been in place there have been no instances where a dredging project could not go forward on this basis. Furthermore, neither the 2005 Rule nor the current amendments create a new definition of practicable; they simply cross-reference and rely upon the pre-existing definition in EPA's regulations at 40 CFR 227.16(b), which was promulgated in 1977. 42 FR 2476, 2479 (Jan. 11, 1977). Meanwhile, the USACE defines "practicable" as follows: "*Practicable* means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." 33 CFR 335.7.

The possibility that EPA and USACE might disagree whether or not an alternative is "practicable" is rooted, in part, in the fact that the two agencies have different regulatory definitions of the term "practicable." That difference has existed since at least 1988, when the USACE's current regulatory definition was promulgated. At the same time, although the two definitions are different, they are similar and have important commonalities. Under both definitions, a practicable alternative must be *available* taking cost and other factors into consideration. As a result, EPA expects that it would be an unusual case in which the two definitions would lead to different conclusions about an alternative's practicability. Indeed, EPA is unaware of any project in New England that has been stopped due to the difference in definitions.

In any event, EPA's definition of "practicable" and its application do not directly affect the USACE's definition of the Federal Standard. If EPA determines that an alternative is "practicable," then non-federal sponsors will need to be found to pay for the incremental cost above what the USACE can legally participate in. One of the important roles of the Steering Committee and LIS RDT described earlier, is the identification and piloting of beneficial use alternatives, identifying possible resources, and eliminating regulatory barriers. EPA expects that the Steering Committee and LIS RDT will, generally and on a project specific basis, facilitate the process of matching projects, beneficial use alternatives, and the resources necessary to implement them, thus mitigating the risk that a project cannot proceed.

EPA's definition of "practicable" requires that the alternative be "available at reasonable incremental cost." Said differently, by definition, a "practicable alternative" will not impose *unreasonable* incremental cost. This would apply as well to the consideration of multiple potential management alternatives for dredged material from a single project, a scenario that the USACE in concerned might add significant costs. Again, incremental costs could not be unreasonable without also rendering the alternative impracticable. As noted in the preamble to the Proposed Rule, the language retained from the 2005 Rule does not attempt to specify in advance how the "reasonable incremental cost" standard will be applied in any particular case. The regulation contemplates a balancing test and EPA believes that the determination is best made on a case-by-case basis. The language of the 2005 Rule also does not attempt to specify who will need to pay for any reasonable incremental costs. Rather, the share of such costs (if any) to be borne by private parties, state government, local government, or the federal government also will need to be worked out in response to actual situations.

EPA cannot eliminate in advance the possibility that no entity will have the means to pay the non-federal share of an alternative EPA has determined is practicable, whether in Long Island Sound or anywhere else in the country. However, in Long Island Sound, with the states and federal agencies working in partnership to implement beneficial use alternatives, EPA believes that the likelihood of a project not going forward because of a lack of funding for the reasonable incremental cost of a practicable alternative has been made as remote as possible.

Comment #9. Many commenters noted that dredging is necessary to ensure recreational and commercial access to Long Island Sound. Marinas, boatyards, and boat clubs are the main access for the public to get out onto the Sound and they need to dredge periodically to maintain sufficient depth for safe navigation. Dredging is necessary to ensure the existence of commercial and recreational industries that generate billions of dollars and support thousands of jobs around the Sound. An important element of state coastal zone management programs—to retain, promote, and enhance access to waterways—will be harmed if the public and marine industry cannot access the Sound.

Response #9. EPA agrees that dredging to provide for safe navigation to and from Long Island Sound is a necessary activity and acknowledges that the marine trade industry is an important contributor to the economy of both states in the Long Island Sound region. The policy goals of the Coastal Zone Management Act are to "preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone." This includes achieving wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development. EPA agrees that providing public access to the coasts for recreation purposes is an important goal of coastal zone management programs. EPA notes that the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone is also an important goal. EPA, USACE, NOAA, and the state coastal zone management programs seek to harmonize these goals.

Comment #10. Numerous commenters believe there needs to be an open-water placement option for dredged material. They express concern that without an open-water option, dredging will become prohibitively expensive.

Response #10. EPA agrees that there is a need for open-water disposal sites in Central and Western Long Island Sound as was demonstrated when EPA designated the sites in 2005 and has been reaffirmed by the DMMP. EPA is retaining these sites as open-water placement options for the long term. However, the Final Rule also reaffirms that the overarching goal is to reduce or eliminate wherever practicable the open-water disposal of dredged material. The amendments make clear that unsuitable material shall not be disposed of at the sites, that sandy material should be used beneficially in almost all cases, and that alternatives to open-water placement of silty material should be thoroughly considered, and used whenever practicable, before open-water placement is allowed.

Comment #11. Commenters had mixed views concerning the Long Island Sound DMMP. Some feel the DMMP provides useful information on what should be done with dredged material and how these projects should be managed. Others feel the DMMP is insufficient and will perpetuate the status quo and EPA cannot rely solely on the DMMP in amending the rule. Rather they assert that EPA must amend the rule to establish additional procedures and standards that will result in clear, staged reductions in open-water disposal of dredged material over time.

Response #11. EPA believes the DMMP provides very useful information for managing toward the goal of reducing or eliminating the open-water disposal of dredged materials in the Sound. The DMMP provides recommended standards and procedures as well as identifying potential alternatives to open water disposal for each of the 52 federal navigation projects in Long Island Sound. The Final Rule builds on the procedures recommended in the DMMP and provides a strong management framework for achieving the goal of reducing or eliminating open-water disposal with the addition of the Steering Committee and its responsibilities, as described in *Response #2.*

Comment #12. Some commenters believe disposal of any dredged material in the Sound should not be allowed to continue. They believe open water disposal does not make environmental sense, will have a negative impact on the ecosystem of Long Island Sound, and that toxic or contaminated sediment should not be dumped in the Sound.

Response #12. As noted above, EPA thinks, many commenters acknowledge, and the DMMP helps to document, that dredging is and will continue to be needed to allow for safe navigation in the harbors, marinas and channels of Long Island Sound. This is important for public safety, marine commerce and recreation, and national security. In order to handle this dredged material, EPA believes it is neither possible nor practical to simply end open water disposal at this time. The goal set in 2005 and retained in the Final Rule is to reduce or eliminate open-water disposal. The Final Rule establishes standards and procedures toward that end.

EPA strongly disagrees with the suggestion that toxic sediments might be disposed of at the sites. EPA's MPRSA regulations require rigorous physical, chemical, and biological testing and analysis of sediments is conducted prior to issuance of any permit to place material at the sites. *See* 40 CFR part 227. As the Proposed and Final Rule make clear, sediments that do not pass these tests are considered "unsuitable" and shall not be disposed of at the sites.

The USACE's Disposal Area Monitoring System (DAMOS) has gathered information on dredged material placement sites in the Sound since the late 1970s. The program has generated over 200 detailed reports addressing questions and concerns related to placement of dredged material in the Sound. Sequential surveys of biological conditions at sites following the placement of dredged material consistently show a rapid recovery of the benthic community to that of the surrounding habitat outside the disposal sites and within the sites. The USACE and EPA monitor benthic health and recovery and the results support the conclusion that there is no evidence of long-term effects on the marine environment.

With the nearly 40-year record of surveys, there have been multiple opportunities to evaluate the effects of large storms (both hurricanes and nor'easters) on the dredged material mounds on the seafloor. These investigations have demonstrated long-term stability of the mounds even at the most exposed sites.

Comment #13. Other commenters believe dredged material can be placed in open-water sites without significant harm and that the Proposed Rule provides adequate safeguards for open-water placement. They note that permitting for dredging and relocation of dredged material is rigorous, thorough, and costly, with multiple agency reviews. They point to years of studies and documentation demonstrating the lack of harm and stability of the dredged materials placed at these sites. They believe scientific evidence does not support the claim that toxic material is dumped into the Sound. They also note that without dredging, the sediments remain in the relative shallows of the bays and harbors, where more fish live and where more people swim, fish, and enjoy the water. Storms in the relative shallows of the bays and harbors create more siltation, turbidity, and disturbance than dredging.

Response #13. EPA agrees that the permitting process for dredging projects is rigorous and thorough and involves coordination with multiple agencies. As discussed in *Response #12,* EPA agrees that there is a substantial body of scientific evidence that indicates that suitable dredged material can be disposed of at the sites with minimal harm to the marine environment. To the extent the commenters are addressing possible concerns about exposure to materials that might be dredged in the future, it is possible that they are dispersed across a greater surface area and at depths more readily re-suspended by the natural forces of winds, waves, and tides compared to the more compact placement at the CLDS and WLDS at depths much less influenced by winds and waves.

Comment #14. Some commenters said that EPA's analysis should consider the nitrogen loading associated with open-water disposal and reconcile it with EPA's nitrogen strategy for Long Island Sound.

Response #14. As discussed in the DMMP, the annual placement of dredged material at the open-water sites is estimated to add less than one-tenth of one percent of the overall annual nitrogen loading to Long Island Sound. The dredging process scrapes a relatively thin layer of surficial sediment from a wide area, and aquatic placement consolidates that volume of sediment into a much smaller footprint. Hence, much of the nitrogen that was available for potential future release from surficial sediment (due to biological reworking or physical disturbance in the shallower environment) is sequestered out of contact with the water column in deposits that have been shown to be stable features on the seafloor.

Comment #15. Some commenters believe dredged material should be used beneficially. Others note that moving away from open-water disposal is feasible in the long run, but the costs associated with these alternatives are far greater than funding available today.

Response #15. EPA agrees that suitable dredged material should be used beneficially whenever and wherever practicable. The standards and procedures contained in the Final Rule and the menu of alternatives contained in the DMMP provide the structure and means to follow a path that should result in reducing open-water disposal while increasing beneficial use of dredged materials. EPA and the USACE believe that sandy materials can be beneficially used in many cases currently and with even greater frequency in the future. The next challenge is to find economic and beneficial environmental uses for suitable silty material. As coastal resiliency becomes an increasingly important priority, EPA is hopeful and expects that opportunities for beneficial uses of silty material will emerge and expand.

Comment #16. The USACE noted that the Proposed Rule maintains the current language of 40 CFR 228.15(b)(4)(vi) which provides, "All references to 'permittees' shall be deemed to include the U.S. Army Corps of Engineers (USACE) when it is authorizing its own dredged material disposal from a USACE dredging project." The USACE explains that it does not permit its own projects and is therefore not a permittee. USACE requested the language be stricken.

Response #16. As noted by USACE, the language in question was included in the restrictions in the 2005 Rule. The intention of the 2005 Rule was to apply the restrictions to all persons who may seek to dispose of dredged material at the sites under MPRSA. As discussed in the preamble to the 2005 Rule, the restrictions were intended to apply both to all MPRSA permittees (*i.e.,* private parties and governmental agencies other than the USACE), and to the USACE itself which disposes of dredged material pursuant to the "authorizations" that it grants to itself rather than permits. *See* 70 FR 32511 (June 3, 2005). *See also* 33 U.S.C. 1413(e); 40 CFR 220.2(h); 33 CFR 336.1(a). The USACE was "deemed" to be a permittee in the 2005 Rule only to make it clear that it was subject to the site Restrictions where the term "permittee" was used, but not to mean that the Corps was actually a permittee. Thus, the USACE was not considered to be a permittee but would be treated like one in this context.

EPA understands the USACE's comment as objecting to being considered a "permittee," rather than an indication that the USACE is not subject to the restrictions. Since the other proposed revisions to the 2005 Rule eliminated the use of the word "permittee," there is no longer a need to specifically qualify what "permittee" refers to. Consistent with the USACE's comment and EPA's intention that the restrictions apply to all persons who may dispose of dredged material at the sites, but not that the USACE would be an actual permittee, EPA has revised the sentence in question in 40 CFR 228.15(b)(4)(vi) to read (in pertinent part): "The restrictions apply to the U.S. Army Corps of Engineers (USACE) when it is authorizing its own dredged material disposal from a USACE dredging project . . . ."

Comment #17. The U.S. Department of the Interior's Bureau of Indian Affairs (BIA) requested that EPA consult with the Shinnecock Indian Nation concerning the amendments to the 2005 Rule.

Response #17. EPA coordinated with Tribal nations in Connecticut, Rhode Island, and New York, including the Shinnecock Indian Nation, throughout the site designation process. None of the tribes that were contacted expressed interest in EPA consulting with them. Upon receipt of the letter from BIA, EPA contacted the Shinnecock Indian Nation to gauge its interest in participating in the formal consultation process, but the tribe did not express an interest in participating. EPA will continue to coordinate with the Shinnecock Indian Nation, as appropriate, in the future.

Comment #18. One commenter asserted that the eastern boundary of Long Island Sound should run from Little Gull Island, through Bartlett's Reef to the Connecticut mainland. They assert that Block Island Sound, Gardiners Bay, the Race, Fishers Island Sound and the New London Disposal Site are not part of Long Island Sound.

Response #18. In 2009, after due consideration of the issue, EPA advised the USACE that the boundary suggested by the commenter should not be used as the eastern boundary of the Sound under MPRSA Section 106(f). EPA's analysis concluded that the boundary, instead, runs northeasterly from Orient Point, through Plum Island, Great Gull and Little Gull Islands, Fishers Island, and Napatree Point, RI, which is sometimes referred to as the "Old Base Line." This boundary has been used consistently by EPA and USACE in all discussions and documents concerning dredged material disposal sites in Long Island Sound.

Comment #19: One commenter claimed that EPA has incorrectly concluded that the proposed action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Response #19: EPA disagrees with the commenter regarding the conclusion that the proposed action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. As EPA noted in the Proposed Rule, the restrictions apply only to projects subject to MPRSA (*i.e.,* all federal projects and non-federal projects greater than 25,000 cubic yards). Small entities are most likely to be involved with projects below the 25,000 cubic yard threshold. Therefore, they are not subject to these restrictions and are subject to Clean Water Act requirements instead. If anything, EPA's action to amend the regulations and maintain the CLDS and WLDS designations will assist small entities by maintaining the CLDS and WLDS as clear options for open-water disposal of dredged material, when appropriate.

III. Changes From the Proposed Rule

The Final Rule incorporates the standards and procedures contained in the Proposed Rule and, pursuant to the comments discussed above, revises them as follows.

A sentence, restating the common goal to reduce or eliminate open water disposal of dredged material in Long Island Sound, has been added to the introductory paragraph (b)(4)(vi) in the Final Rule. Another sentence in the same paragraph has been revised to clarify that although the USACE is not a permittee, the restrictions also apply to the USACE when it is authorizing its own dredged material disposal from a USACE dredging project.

The Final Rule establishes a Long Island Sound Dredging Steering Committee consisting of high level representatives from the states, EPA, the USACE, and, as appropriate, other federal and state agencies. The Steering Committee will provide policy-level direction to the LIS RDT and facilitate high-level collaboration among the agencies critical to accelerating the development and use of alternatives to open-water disposal of dredged material. The charge to the Steering Committee includes: developing a baseline for the volume and percentage of dredged material being placed in open water and the amount and percentage being beneficially used; establishing a reasonable and practicable series of stepped objectives (with timeframes) for reducing the amount of open water placement and increasing the amount of beneficially used material, while also recognizing that there will be fluctuations in annual volumes of dredged material generated due to the very nature of the dredging program; and developing accurate methods for tracking reductions with due consideration for annual fluctuations. The Final Rule specifies that the stepped objectives should incorporate an adaptive management approach toward continuous improvement. When tracking progress, the Steering Committee will recognize that exceptional circumstances may result in delays meeting an objective. Exceptional circumstances should be infrequent, irregular, and unpredictable. In carrying out its tasks, the Steering Committee shall guide and utilize the LIS RDT, as appropriate.

Participation of Connecticut, New York, and Rhode Island on the Steering Committee and LIS RDT is voluntary; it is not legally mandated by the new regulations. That said, EPA expects, as discussed earlier, that Connecticut and New York (and possibly Rhode Island) will participate and that each of the member agencies will commit the necessary resources to support the work of the Steering Committee and the LIS RDT, including collecting the data necessary to support the establishment of the baseline and tracking and reporting the future disposition of dredged materials. EPA expects the Steering Committee, with the support of the LIS RDT, to guide a concerted effort to spur greater use of beneficial use alternatives, including piloting alternatives, identifying possible resources, and eliminating regulatory barriers. The Final Rule contains provisions establishing the Steering Committee and setting out the responsibilities described above. [(b)(4)(vi)(E)]

The Final Rule clarifies certain of the roles and responsibilities of the LIS RDT. Again, participation by the states on the LIS RDT is voluntary, but EPA expects the states to participate and to provide the resources necessary for meaningful participation. The Final Rule establishes the relationship between the Steering Committee, which provides policy-level direction for the LIS RDT, and the LIS RDT, which has the responsibility for execution. It more explicitly calls for project proponents to consult with the LIS RDT at the earliest possible stage to expand consideration of beneficial use alternatives. The Final Rule sets a clear expectation that the LIS RDT will report to USACE on its review of final projects within 30 days of receipt of project information. It also provides additional detail on the organization and procedures for the LIS RDT. EPA views the charter under which the LIS RDT has operated during the development of the DMMP as a useful starting point for a new charter that encompasses the revised roles, responsibilities and makeup of the LIS RDT. The current LIS RDT charter should serve as the interim guide for the LIS RDT's process until a new charter is developed. [(b)(4)(vi)(F)]

Lastly, the Final Rule provides the potential for reconsidering the rule, upon petition, if in ten years the amount of dredged material disposed of at the sites has not been maintained or reduced. [(b)(4)(vi)(H)]

IV. Compliance With Statutory and Regulatory Requirements

The preamble to the 2005 Rule described how the dredged material disposal site designation process that culminated in the designation of the CLDS and WLDS was consistent with the requirements of the MPRSA, the CWA, the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), the Endangered Species Act (ESA), and the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). *See* 70 FR 32502–32508 (June 3, 2005). While the CWA does not apply specifically to an EPA designation of a long-term dredged material disposal site under the MPRSA, future federal and non-federal projects involving dredged material disposal in Long Island Sound will require both a section 404 permit as well as a State Water Quality Certification pursuant to section 401 of the CWA.

In the preamble to the Proposed Rule, EPA determined that the proposed amendments to the 2005 Rule, and the process by which they were developed, also are consistent with the laws noted above. 81 FR 7060–7061. One of the important factors in this determination was that the amended Rule would provide the same or greater protection of water quality and the marine environment as the 2005 Rule. 81 FR 7060. EPA's conclusions regarding compliance with those laws has not changed following consideration of public comments.

As the preamble to the Proposed Rule explained, the proposed amendments to the 2005 Rule do not make decisions about the suitability of any particular dredged material for open-water disposal or about any other type of management of the material. Such decisions will be made for specific dredging projects on the basis of project-specific permitting evaluations. The amendments to the regulations, instead, provide specific standards and procedures designed to further the goal of reducing or eliminating open-water disposal of dredged material at the CLDS and WLDS. These amendments are consistent with provisions of the 2005 Rule that called for possible revisions to the Rule based on the standards and procedures recommended in the Long Island Sound Dredged Material Management Plan (DMMP). The preamble to the Proposed Rule also provided additional statute-specific discussion. 81 FR 7060–7061.

At the time of the Proposed Rule, consultation and coordination with state and federal agencies regarding the CZMA, ESA, MSFCMA, respectively, were underway. Those consultations have been completed, as discussed below.

1. Marine Protection, Research, and Sanctuaries Act (MPRSA)

In the preamble to the 2005 Rule, EPA explained in detail how its designation of the CLDS and WLDS complied with the MPRSA. 70 FR 32502–32508. In the preamble for the Proposed Rule, EPA explained how the proposed amendments to the 2005 Rule also complied with the MPRSA. As part of such compliance, EPA has finalized updates to the Site Management and Monitoring Plan (SMMP) for both the CLDS and the WLDS.

2. Coastal Zone Management Act (CZMA)

Under the CZMA, EPA, like any other federal agency, is required to provide relevant states with a determination that any activity it proposes that could affect the uses or natural resources of a state's coastal zone is consistent to the maximum extent practicable with the enforceable policies of the state's coastal zone management program. EPA determined that the amendments to the 2005 Rule are consistent with the enforceable policies of the coastal zone management programs of both Connecticut and New York and provided each state with a written determination to that effect. EPA consulted with each state's coastal zone management program prior to this final rulemaking. In a letter dated April 8, 2016, the Connecticut Department of Energy and Environmental Protection concurred with EPA's determination with regard to Connecticut's coastal zone management program. The New York State Department of State (NY DOS) provided its concurrence on April 25, 2016. NY DOS's concurrence was conditioned on the Final Rule including provisions that address NY DOS's comments on the Proposed Rule. EPA believes the changes to the Proposed Rule described above are consistent with NY DOS's condition(s) and, thus, considers NY DOS to have concurred with the Final Rule.[1]

3. Endangered Species Act

Since the 2005 Rule, NOAA's National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service listed the Atlantic sturgeon as an endangered species under the ESA. Parts of Long Island Sound are among the distinct population segments listed as endangered by NMFS in 2012. EPA's analysis considered the Atlantic sturgeon as well as sea turtles and listed marine mammals. Consistent with the ESA, EPA consulted with NMFS and USFWS on this rulemaking action and the updating of the SMMPs for the two disposal sites. NMFS has concurred with EPA's determination that any adverse effects on listed species from this action would be insignificant or discountable, and that this action is not likely to adversely affect any listed species or critical habitat of such species under NMFS jurisdiction. EPA sent a "no effects" determination for species under USFWS jurisdiction to the USFWS and did not receive any response, so EPA assumed concurrence. No additional consultation or coordination is required.

4. Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)

EPA coordinated with NMFS on this rulemaking action and the updating of SMMPs for the two disposal sites, consistent with the Essential Fish Habitat provisions of the MSFCMA. NMFS has concurred with our determination that it is unlikely that this action will result in adverse effects to any essential fish habitat. Therefore, no additional coordination is required.

V. Final Action

EPA is publishing this Final Rule to amend the restrictions on the use of the CLDS and WLDS. This action is consistent with, and retains a number of, the restrictions contained in the original designation of these sites in 2005. Certain of those restrictions required completion of a DMMP that would identify procedures and standards for reducing or eliminating the disposal of dredged material in Long Island Sound. Since the DMMP has been completed EPA's Final Rule removes the restrictions related to its development. The 2005 restrictions further require EPA, within 120 days of completion of the DMMP, to issue final amendments to the restrictions to incorporate procedures and standards consistent with those recommended in the DMMP for reducing or eliminating the disposal of dredged material in Long Island Sound. While the Final Rule was not issued within 120 days of completion of the DMMP (which would have been May 10), and use of the CLDS and WLDS was temporarily suspended, issuance of today's Final Rule satisfies that requirement such that the suspension of the sites has been lifted and they are now available for use. *See* 40 CFR 228.15(b)(4)(vi)(C) (footnote 1) and (G).

The Final Rule incorporates the standards and procedures recommended in the DMMP and augments them by establishing a Steering Committee to provide policy guidance and direction to the LIS RDT and to: Develop a baseline for the volume and percentage of dredged material being placed in open water and the amount and percentage being beneficially used; establish a reasonable and practicable series of stepped objectives (with timeframes) for reducing the amount of open water placement and increasing the amount of beneficially used material, while also recognizing that there will be fluctuations in annual volumes of dredged material generated due to the very nature of the dredging program; and develop accurate methods for tracking reductions with due consideration for annual fluctuations. The stepped objectives will incorporate an adaptive management approach toward continuous improvement. The Rule provides that when tracking progress, the Steering Committee will recognize that exceptional circumstances may result in delays meeting an objective. Exceptional circumstances should be infrequent, irregular, and unpredictable. The Final Rule also provides that in carrying out its tasks, the Steering Committee shall guide and utilize the LIS RDT, as appropriate.

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[1] NY DOS's conditional concurrence stated its conclusion that EPA's rule would not comply with the enforceable provisions of New York's coastal zone management program unless EPA adopted provisions consistent with the conditions proposed by NY DOS. While EPA has, indeed, adopted such provisions that assure NY DOS's concurrence, EPA does not agree with NY DOS's assessment of proposed regulatory amendments. EPA, instead, determined that the terms of its Proposed and Final Rules fully comply or, in the alternative, comply to the maximum extent practicable with the enforceable provisions of New York's coastal zone management program. EPA's assessment is documented in the record, including, but not limited to, its CZMA consistency determination.

The Final Rule also expressly allows any person to submit a petition seeking changes to the rule if, in ten years, the amount of dredged material disposed of at the sites has not been maintained or reduced.

VI. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action, as defined in the Executive Order, and was therefore not submitted to the Office of Management and Budget (OMB) for review.

2. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it would not require persons to obtain, maintain, retain, report or publicly disclose information to or for a federal agency.

3. Regulatory Flexibility Act (RFA)

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). The amended restrictions in this rule are only relevant for dredged material disposal projects subject to the MPRSA. Non-federal projects involving 25,000 cubic yards or less of material are not subject to the MPRSA and, instead, are regulated under CWA section 404. This action will, therefore, have no effect on such projects. "Small entities" under the RFA are most likely to be involved with smaller projects not covered by the MPRSA. Therefore, EPA does not believe a substantial number of small entities will be affected by today's rule. Furthermore, the amendments to the restrictions also will not have significant economic impacts on a substantial number of small entities because they primarily will create requirements to be followed by regulatory agencies rather than small entities, and will create requirements (*i.e.,* the standards and procedures) intended to help ensure satisfaction of the existing regulatory requirement that practicable alternatives to the ocean dumping of dredged material be utilized (*see* 40 CFR 227.16).

4. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

5. Executive Order 13132: Federalism

This action does not have federalism implications within the meaning of the Executive Order. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 because the restrictions will not have substantial direct effects on Indian tribes, on the relationship between the federal government and Indian Tribes, or the distribution of power and responsibilities between the federal government and Indian Tribes. EPA consulted with the affected Indian tribes in making this determination.

7. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have a disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

11. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means, "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

EPA expects that this rule will afford additional protection to the waters of Long Island Sound and organisms that inhabit them. Building on the existing protections of the MPRSA, the ocean dumping regulations, the 2005 Rule, the CWA, and other relevant statutes and regulations, the final regulatory amendments are designed to promote and support reductions in open-water disposal of dredged material in Long Island Sound.

12. Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes

Section 6(a)(i) of Executive Order 13547, (75 FR 43023, July 19, 2010) requires, among other things, that EPA and certain other agencies ". . . to the fullest extent consistent with applicable law . . . take such action as necessary to implement the policy set forth in section 2 of this order and the stewardship principles and national priority objectives as set forth in the Final Recommendations and subsequent guidance from the Council." The policies in section 2 of Executive Order 13547 include, among other things, the following: ". . . it is the policy of the United States to: (i) protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources; (ii) improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies. . . ." As with Executive Order 13158 (Marine Protected Areas), the overall purpose of the Executive Order is to promote protection of ocean and coastal environmental resources.

EPA expects that this Final Rule will afford additional protection to the waters of Long Island Sound and organisms that inhabit them. Building on the existing protections of the MPRSA, the ocean dumping regulations, the 2005 Rule, the CWA and other relevant statutes and regulations, the regulatory amendments are designed to promote the reduction or elimination of open-water disposal of dredged material in Long Island Sound.

13. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective August 8, 2016.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: June 24, 2016.

H. Curtis Spalding,

Regional Administrator, EPA Region 1-New England.

For the reasons stated in the preamble, title 40, Chapter I, of the *Code of Federal Regulations* is amended as set forth below.

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by:
■ a. Revising paragraphs (b)(4) introductory text and (b)(4)(i) and (v) and (b)(4)(vi) introductory text;
■ b. Removing paragraphs (b)(4)(vi)(C) through (F);
■ c. Adding new paragraphs (b)(4)(vi)(D) through (F);
■ d. Revising paragraph (b)(4)(vi)(G);
■ e. Removing paragraph (b)(4)(vi)(H);
■ f. Redesignating paragraph (b)(4)(vi)(I) as (b)(4)(vi)(C) and revising it;
■ g. Redesignating paragraph (b)(4)(vi)(J) through (L) as (b)(4)(vi)(H) through (J), respectively;
■ h. Removing paragraph (b)(4)(vi)(M);
■ i. Redesignating paragraph (b)(4)(vi)(N) as (b)(4)(vi)(K); and
■ j. Revising paragraphs (b)(5) introductory text and (b)(5)(v).

The revisions and additions read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(b) * * *

(4) Central Long Island Sound Dredged Material Disposal Site (CLDS).

(i) *Location:* Corner Coordinates (NAD 1983) 41°9.5′ N., 72°54.4′ W.; 41°9.5′ N., 72°51.5′ W.; 41°08.4′ N., 72°54.4′ W.; 41°08.4′ N., 72°51.5′ W.

* * * * *

(v) *Period of use:* Continuing use.

(vi) *Restrictions:* The designation in this paragraph (b)(4) sets forth conditions for the use of Central Long Island Sound and Western Long Island Sound Dredged Material Disposal Sites (CLDS and WLDS, respectively). These conditions apply to all disposal subject to the MPRSA, namely, non-federal projects greater than 25,000 cubic yards and all federal projects. With regard to federal projects, the restrictions apply to the U.S. Army Corps of Engineers (USACE) when it is authorizing its own dredged material disposal from a USACE dredging project, as well as to federal dredged material disposal projects that require authorization from a permit issued by the USACE. The goal of these conditions is to reduce or eliminate open-water disposal of dredged material in Long Island Sound. The conditions for this designation are as follows:

* * * * *

(C) Disposal of dredged material at the designated sites pursuant to the designation in this paragraph (b)(4) shall be allowed if, after full consideration of recommendations provided by the Long Island Sound Regional Dredging Team (LIS RDT) if the members of the LIS RDT reach consensus, or provided by the LIS RDT's member agencies if no consensus is achieved, the USACE finds (and EPA does not object to such finding), based on a fully documented analysis, that for a given dredging project:

(*1*) There are no practicable alternatives (as defined in 40 CFR 227.16(b)) to open-water disposal in Long Island Sound. Any available practicable alternative to open-water disposal will be fully utilized for the maximum volume of dredged material practicable;

(*2*) Determinations relating to paragraph (b)(4)(vi)(C)(*1*) of this section will recognize that, consistent with 40 CFR 227.16(b), a practicable alternative to open-water disposal may add reasonable incremental costs. Disposal of dredged material at the designated sites pursuant to this paragraph (b)(4) shall not be allowed to the extent that a practicable alternative is available.

(*3*) The following standards for different dredged material types have been appropriately considered:

(*i*) *Unsuitable material.* Disposal shall be limited to dredged sediments that comply with the Ocean Dumping Regulations.

(*ii*) *Suitable sandy material.* Suitable coarse-grained material, which generally may include up to 20 percent fines when used for direct beach placement, or up to 40 percent fines when used for nearshore bar/berm nourishment, should be used for beach or nearshore bar/berm nourishment or other beneficial use whenever practicable. If no other alternative is determined to be practicable, suitable course-grained material may be placed at the designated sites.

(*iii*) *Suitable fine-grained material.* This material has typically greater than 20 to 40 percent fine content and, therefore, is not typically considered appropriate for beach or nearshore placement, but has been determined to be suitable for open-water placement by testing and analysis. Materials dredged from upper river channels in the Connecticut, Housatonic and Thames Rivers should, whenever possible, be disposed of at existing Confined Open Water sites, on-shore, or through in-river placement. Other beneficial uses such as marsh creation, should be examined and used whenever practicable. If no other alternative is determined to be practicable, suitable fine-grained material may be placed at the designated sites.

(D) *Source reduction.* Efforts to control sediment entering waterways can reduce the need for maintenance dredging of harbor features and facilities by reducing shoaling rates. Federal, state and local agencies tasked with regulating discharges into the watershed should continue to exercise their authorities under various statues and regulations in a continuing effort to reduce the flow of sediments into state waterways and harbors.

(E) There is established a Long Island Sound Dredging Steering Committee (Steering Committee), consisting of high-level representatives from the states of Connecticut and New York, EPA, USACE, and, as appropriate, other federal and state agencies. The Steering Committee will provide policy-level direction to the Long Island Sound Regional Dredging Team (LIS RDT) and facilitate high-level collaboration among the agencies critical to promoting the development and use of beneficial alternatives for dredged material. State participation on the LIS RDT and Steering Committee is voluntary. The Steering Committee is charged with: Establishing a baseline for the volume and percentage of dredged material being beneficially used and placed at the open-water sites; establishing a reasonable and practicable series of stepped objectives, including timeframes, to increase the percentage of beneficially used material while reducing the percentage and amount being disposed in open water, and while recognizing that the amounts of dredged material generated by the dredging program will naturally fluctuate from year to year; and developing accurate methods to track the placement of dredged material, with due consideration for annual fluctuations. The stepped objectives should incorporate an adaptive management approach while aiming for continuous improvement. When tracking progress the Steering Committee should recognize that exceptional circumstances may result in delays in meeting an objective. Exceptional circumstances should be infrequent, irregular, and unpredictable. It is expected that each of the member agencies will commit the necessary resources to support the LIS RDT and Steering Committee's work, including the collection of data necessary to support establishing the baseline and tracking and reporting on the future disposition of dredged material. The Steering Committee may utilize the LIS RDT, as appropriate, to carry out the tasks assigned to it. The Steering Committee, with the support of the LIS RDT, will guide a concerted effort to encourage greater use of beneficial use alternatives, including piloting alternatives, identifying possible resources, and eliminating regulatory barriers, as appropriate.

(F) The goal of the Long Island Sound Regional Dredging Team (LIS RDT), working in cooperation with, and support of, the Steering Committee, is to reduce or eliminate wherever practicable the open-water disposal of dredged material. The LIS RDT's purpose, geographic scope, membership, organization, and procedures are provided as follows:

(*1*) *Purpose.* The LIS RDT will:

(*i*) Review dredging projects and make recommendations as described in paragraph (vi)(C) above. The LIS RDT will report to the USACE on its review of dredging projects within 30 days of receipt of project information. Project proponents should consult with the LIS RDT early in the development of those projects to ensure that alternatives to open-water placement are fully considered.

(*ii*) Assist the Steering Committee in: Establishing a baseline for the volume and percentage of dredged material being beneficially used and placed at the open water sites; establishing a reasonable and practicable series of stepped objectives, including timeframes, to increase the percentage of beneficially used material while reducing the percentage and amount being disposed in open water, recognizing that the volume of dredged material generated by the dredging program will naturally fluctuate from year to year; and developing accurate methods to track and report on the placement of dredged material, with due consideration for annual fluctuations.

(*iii*) In coordination with the Steering Committee, serve as a forum for: Continuing exploration of new beneficial use alternatives to open-water disposal; matching the availability of beneficial use alternatives with dredging projects; exploring cost-sharing opportunities; and promoting opportunities for beneficial use of clean, parent marine sediments often generated in the development of CAD cells.

(*iv*) Assist the USACE and EPA in continuing long-term efforts to monitor dredging impacts in Long Island Sound, including supporting the USACE's DAMOS (Disposal Area Monitoring System) program and related efforts to study the long-term effects of open-water placement of dredged material.

(*2*) *Geographic scope.* The geographic scope of the LIS RDT includes all of Long Island Sound and adjacent waters landward of the seaward boundary of the territorial sea (three-mile limit) or, in other words, from Throgs Neck to a line three miles seaward of the baseline across western Block Island Sound.

(*3*) *Membership.* The LIS RDT shall be comprised of representatives from the states of Connecticut and New York, EPA, USACE, and, as appropriate, other federal and state agencies. As previously noted, state participation on the LIS RDT is voluntary.

(*4*) *Organization and procedures.* Specific details regarding structure (*e.g.,* chair, committees, working groups) and process shall be determined by the LIS RDT and may be revised as necessary to best accomplish the team's purpose.

(G) If the volume of open-water disposal of dredged material, as measured in 2026, has not declined or been maintained over the prior ten years, then any party may petition EPA to conduct a rulemaking to amend the restrictions on the use of the sites.

* * * * *

(5) Western Long Island Sound Dredged Material Disposal Site (WLDS).

* * * * *

(v) *Period of use:* Continuing use.

* * * * *

[FR Doc. 2016–16147 Filed 7–6–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 1, 10, 11, 12, 13, 14, and 15

[Docket No. USCG–2016–0611]

Policy for Credentialing Officers of Towing Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of Navigation and Vessel Inspection Circular (NVIC) 03–16, Guidelines for Credentialing Officers of Towing Vessels. This NVIC provides guidance to mariners concerning regulations governing endorsements to Merchant Mariner Credentials for service on towing vessels.

DATES: The policy announced in NVIC 03–16 is effective on July 7, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about NVIC 03–16, call or email Luke B. Harden, Mariner Credentialing Program Policy Division (CG–CVC–4), U.S. Coast Guard; telephone 202–372–2357, or *MMCPolicy@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Viewing Documents

Navigation and Vessel Inspection Circular (NVIC) 03–16, Guidelines for Credentialing Officers of Towing Vessels is available in the docket for this notice of availability and can also be viewed by going to *http://www.uscg.mil/nmc* and clicking on "STCW," then click on "2014 NVIC Updates." To view NVIC 03–16 in the docket, go to *http://www.regulations.gov,* type USCG–2016–0611 in the "Search" box and click "Search."

Discussion

On December 24, 2014, the Coast Guard published a final rule in the **Federal Register** (78 FR 77796) amending Title 46, Code of Federal Regulations, to implement the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as amended 1978 (STCW Convention), including the 2010 amendments to the STCW Convention, and the Seafarers' Training, Certification and Watchkeeping Code. The rule also made changes to reorganize, clarify, and update regulations for credentialing merchant mariners.

NVIC 03–16 describes policy for merchant mariners to qualify for and renew endorsements to Merchant Mariner Credentials for service on towing vessels. Notable provisions of this NVIC include:

1. Providing guidance on grandfathering provisions contained in the rule published December 24, 2014 (78 FR 77796).
2. Revising the "Frequently Asked Questions" to include discussion of the provisions of the new rule, and to include questions that have arisen with regularity since publication of the predecessor NVIC 04–01.
3. Revising the Towing Officer Assessment Records (TOARs) to include guidance to Designated Examiners on how to perform assessment of the tasks in the TOARs and to add certain tasks necessary to fully assess the competence of candidates for endorsements. For example, the task "Maneuver through a bridge" was added to the Near Coastal/Oceans TOAR as this TOAR is for an endorsement that will be valid where bridges are common.
4. Providing additional guidance on TOARs restricted to Local Limited Areas.
5. Providing guidance on endorsements that will be restricted to routes without locks and to service upon harbor-assist vessels or Integrated Tug Barge (ITB) and Articulated Tug Barge (ATB) vessels.

Authority

This notice of availability is issued under the authority of 5 U.S.C. 552(a).

Dated: June 30, 2016.

V.B. Gifford,

Captain, U.S. Coast Guard, Director, Inspection and Compliance.

[FR Doc. 2016–16113 Filed 7–6–16; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 16–123; RM–11766; DA 16–711]

Television Broadcasting Services; Cordele, Georgia

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: A petition for rulemaking was filed by Sunbelt-South Tele-Communications, Ltd. (Sunbelt), the licensee of WSST–TV, channel 51, Cordele, Georgia, requesting the substitution of channel 22 for channel 51 at Cordele. Sunbelt filed comments reaffirming its interest in the proposed channel substitution and stating that if the proposal is granted, it will promptly file an application for the facilities specified in the rulemaking petition and construct the station. Sunbelt asserts that adopting the proposal would serve the public interest because it would remove any potential interference with authorized wireless operations in the Lower 700 MHz A Block adjacent to channel 51 in Cordele. In addition, Sunbelt agrees that WSST–TV will be protected in the incentive auction at its channel 51 operating parameters even after its move to channel 22, and recognizes that as a result of repacking during the incentive auction, it may be required to move from channel 22.

DATES: This rule is effective August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *Joyce.Bernstein@fcc.gov,* Media Bureau, (202) 418–1647.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 16–123, adopted June 28, 2016, and released June 28, 2016. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC, 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Georgia is amended by removing channel 51 and adding channel 22 at Cordele.

[FR Doc. 2016–15970 Filed 7–6–16; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 81, No. 130
Thursday, July 7, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7425; Directorate Identifier 2014–NM–244–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2011–17–05, for certain Airbus Model A300 B2–1C, A300 B2–203, A300 B2K–3C, A300–B4–103, A300 B4–203, and A300 B4–2C airplanes. AD 2011–17–05 currently requires repetitive inspections in sections 13 through 18 of the fuselage between rivets of the longitudinal lap joints between frames (FR) 18 and 80 for cracking, and repair or modification if necessary. Since we issued AD 2011–17–05, we have determined that a revised inspection program is necessary. This proposed AD would include a revised repetitive inspection program of all longitudinal lap joints and repairs between frames 18 and 80 to address this widespread fatigue damage (WFD). We are proposing this AD to detect and correct fatigue cracking of the longitudinal lap joints of the fuselage, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by August 22, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7425; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425- 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7425; Directorate Identifier 2014–NM–244–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On September 23, 2011, we issued AD 2011–17–05, Amendment 39–16769 (76 FR 63177, October 12, 2011) ("AD 2011–17–05"). AD 2011–17–05 requires actions intended to address an unsafe condition on certain Airbus Model A300 B2–1C, A300 B2–203, A300 B2K–3C, A300–B4–103, A300 B4–203, and A300 B4–2C airplanes.

Since we issued AD 2011–17–05, we have determined it is necessary to require a revised inspection program for the longitudinal lap joints and repairs between FR 18 and FR 80 because additional cracking was found in an expanded area.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0265, dated December 9, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Cracks were found on in-service aeroplanes in sections 13 to 18 of the fuselage between rivets of longitudinal lap joints between frames (FR) 18 and FR80.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> To address this unsafe condition, Airbus developed an inspection programme for the longitudinal lap joints and repairs between FR18 and FR80, and EASA issued AD 2007–0091 [which corresponds to FAA AD 2011–17–05] to require the implementation of that programme.
>
> Since EASA AD 2007–0091 was issued, [a] new Widespread Fatigue Damage regulation has been issued. This new regulation led to the revision of the maintenance programme for the longitudinal lap joints and repairs between FR18 and FR80.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2007–0091, which is superseded, and requires implementation of the revised inspection programme.

Required actions include repetitive inspections of the bonded inner doublers of the longitudinal lap joints in sections 13 through 18 for disbonding or corrosion, and repairing any disbonding and corrosion; a follow-on rototest or ultrasonic inspection to verify cracking, and repair of any cracking. The repetitive inspection interval ranges from 3,000 flight cycles up to 8,000 flight cycles, depending on airplane configuration. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–7425.

Widespread Fatigue Damage

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as widespread fatigue damage. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

We are issuing this AD to detect and correct fatigue cracking of the longitudinal lap joints of the fuselage, which could result in reduced structural integrity of the airplane.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

Unlike the procedures described in the service information, this proposed AD would not permit further flight if cracks are detected. We have determined that, because of the safety implications and consequences associated with that cracking, any cracked upper shell structure must be repaired before further flight.

The MCAI refers to Airbus Service Bulletin A300–53–0211, Revision 08, dated November 26, 2013, for compliance times and for the new inspections. However, paragraph (l) of this proposed AD would require operators to do the initial inspections within 180 days after the effective date of this AD, in a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA); and thereafter at intervals approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. We find that 180 days is an appropriate amount of time to accomplish the initial inspections and address the unsafe condition.

These differences have been coordinated with the EASA and Airbus.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry.

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2011–17–05 (5 airplanes)	3,735 work-hours × $85 per hour = $317,475	$317,475	$1,587,375
New proposed inspections (4 airplanes)	140 work-hours × $85 per hour = $11,900	11,900	47,600

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–17–05, Amendment 39–16769 (76 FR 63177, October 12, 2011), and adding the following new AD:

Airbus: Docket No. FAA–2016–7425; Directorate Identifier 2014–NM–244–AD.

(a) Comments Due Date

We must receive comments by August 22, 2016.

(b) Affected ADs

This AD replaces AD 2011–17–05, Amendment 39–16769 (76 FR 63177, October 12, 2011) ("AD 2011–17–05").

(c) Applicability

This AD applies to Airbus Model A300 B2–1C, A300 B2–203, A300 B2K–3C, A300–B4–103, A300 B4–203, and A300 B4–2C airplanes; certificated in any category; all manufacturer serial numbers, except those on which Airbus Modification 2611 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by an evaluation done by the design approval holder indicating that certain sections of the longitudinal lap joints are subject to widespread fatigue damage. We are issuing this AD to detect and correct fatigue cracking of the longitudinal lap joints of the fuselage, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Fuselage Inner Doubler Inspections and Repair, With Revised Formatting

This paragraph restates the requirements of paragraph (l) of AD 2011–17–05, with revised formatting. For airplanes on which any inspections of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 13 through 18 (except Sections 16 and 17 at Stringer 31 left-hand and right-hand) for disbonding and cracking have not been done as of November 16, 2011 (the effective date of AD 2011–17–05), as specified by Airbus Service Bulletin A300–53–229: Prior to the accumulation of 24,000 total flight cycles or within 15 years since new, whichever occurs first; or within 60 days after November 16, 2011; whichever occurs later; do a detailed inspection of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 13 through 18 (except Sections 16 and 17 at Stringer 31 left-hand and right-hand) for disbonding and cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997. If no disbonding and no cracking are found, repeat the inspection thereafter at the applicable intervals specified in paragraph (h) of this AD.

(1) If no cracking is found, and "minor" disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Repeat the inspection thereafter at intervals not to exceed 1 year for areas below stringer 22, and at intervals not to exceed 2 years for areas above and including stringer 22.

(2) If no cracking is found, and "major" disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Within 1,000 flight cycles after doing the inspection, repair, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(3) If any cracking is found, repair prior to further flight, in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(h) Retained Repetitive Intervals for Inspections for Disbonding and Cracking

This paragraph restates the repetitive intervals specified in table 1 of AD 2011–17–05. At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, repeat the inspection required by paragraph (g) of this AD.

(1) For Sections 13 and 14 as specified in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997: Repeat the inspection at intervals not to exceed 7 years or 12,000 flight cycles, whichever occurs first.

(2) For Sections 15 through 18 as specified in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997: Repeat the inspection within 8.5 years or 12,000 flight cycles, whichever occurs first.

(i) Retained Fuselage Inner Doubler Inspections and Repair

This paragraph restates the requirements of paragraph (m) of AD 2011–17–05. For airplanes on which any inspections of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 13 through 18 (except Sections 16 and 17 at Stringer 31 left-hand and right-hand) for disbonding and cracking have been done as of November 16, 2011 (the effective date of AD 2011–17–05), as specified in Airbus Service Bulletin A300–53–229; except for airplanes on which a repair of that area has been done as specified in Airbus Service Bulletin A300–53–229: Within 7 years or 12,000 flight cycles (for Sections 13 and 14), or within 8.5 years or 12,000 flight cycles (for Sections 15 and 18), after doing the inspection, whichever occurs first; or within 60 days after November 16, 2011, whichever occurs later, do a detailed inspection of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 13 through 18 (except Sections 16 and 17 at Stringer 31 left-hand and right-hand) for disbonding and cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997. If no disbonding and no cracking are found, repeat the inspection at the applicable time specified in paragraph (h) of this AD.

(1) If no cracking is found, and "minor" disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Repeat the inspection thereafter at intervals not to exceed 1 year for areas below stringer 22, and at intervals not to exceed 2 years for areas above and including stringer 22.

(2) If no cracking is found, and "major" disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Within 1,000 flight cycles after doing the inspection, repair, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(3) If any cracking is found, repair prior to further flight, in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(j) Retained Fuselage Inner Doubler Inspections and Repair, With No Changes

This paragraph restates the requirements of paragraph (n) of AD 2011–17–05, with no changes. For airplanes on which any inspections of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 16 and 17 at Stringer 31 left-hand

and right-hand for disbonding and cracking have not been done as of November 16, 2011 (the effective date of AD 2011–17–05), as specified in Airbus Service Bulletin A300–53–229: Prior to the accumulation of 24,000 total flight cycles or within 12 years since new, whichever occurs first; or within 60 days after November 16, 2011, whichever occurs later, do a detailed inspection of the fuselage bonded inner doubles of the longitudinal lap joints in Sections 16 and 17 at Stringer 31 left-hand and right-hand for disbonding and cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997. If no disbonding and no cracking are found, repeat the inspection thereafter at intervals not to exceed 7 years or 12,000 flight cycles, whichever occurs first.

(1) If no cracking is found, and "minor" disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Repeat the inspection thereafter at intervals not to exceed 1 year for areas below stringer 22, and at intervals not to exceed 2 years for areas above and including stringer 22. Doing a repair in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, terminates the repetitive inspections required by this paragraph for that area.

(2) If no cracking is found, and "major" disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Within 1,000 flight cycles after doing the inspection, repair, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(3) If any cracking is found, repair prior to further flight, in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(k) Retained Fuselage Inner Doubler Inspections and Repair, With No Changes

This paragraph restates the requirements of paragraph (o) of AD 2011–17–05, with no changes. For airplanes on which any inspections of the fuselage bonded inner doublers of the longitudinal lap joints in Sections 16 and 17 at Stringer 31 left-hand and right-hand for disbonding and cracking have been done as of November 16, 2011, as specified in Airbus Service Bulletin A300–53–229; except airplanes on which a repair of that area has been done as specified in Airbus Service Bulletin A300–53–229: Within 7 years or 12,000 flight cycles after doing the inspection, whichever occurs first; or within 60 days after November 16, 2011; whichever occurs later; do a detailed inspection of the fuselage bonded inner doubles of the longitudinal lap joints in Sections 16 and 17 at Stringer 31 left-hand and right-hand for disbonding and cracking, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997. If no disbonding and no corrosion are found, repeat the inspection thereafter at intervals not to exceed 7 years or 12,000 flight cycles, whichever occurs first.

(1) If no cracking is found, and "minor" disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Repeat the inspection thereafter at intervals not to exceed 1 year for areas below stringer 22, and at intervals not to exceed 2 years for areas above and including stringer 22. Doing a repair, in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, terminates the repetitive inspections required by this paragraph for that area.

(2) If no cracking is found, and "major" disbonding, as defined in Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997, is found: Within 1,000 flight cycles after doing the inspection, repair, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(3) If any cracking is found, repair prior to further flight, in accordance with Airbus Service Bulletin A300–53–229, Revision 5, dated April 8, 1997.

(l) New Repetitive Inspections and Repair

Within 180 days after the effective date of this AD, do rototest and ultrasonic inspections, as applicable, for cracking of all longitudinal lap joints and repairs between frames 18 and 80; and repair any cracking before further flight; using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). Repeat the applicable inspection, including post-repair inspections, thereafter at intervals approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. Accomplishing the initial inspection and applicable repairs required by this paragraph terminates the actions required by paragraphs (g) through (k) of this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0265, dated December 9, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7425.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 23, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15910 Filed 7–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7424; Directorate Identifier 2015–NM–173–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. This proposed AD was prompted by a determination that, due to significant differences among all airspeed sources, the flight controls will revert to alternate law, the autopilot (AP) and the auto-thrust (A/THR) will automatically disconnect, and the flight director (FD) bars will be automatically removed. Then, if two airspeed sources become similar while still erroneous, the flight guidance computers will display the FD bars again, and enable

the re-engagement of the AP and A/THR. In some cases, however, the AP orders may be inappropriate, such as possible abrupt pitch command. This proposed AD would require a software standard upgrade (modification or replacement) of the three flight control primary computers (FCPCs). We are proposing this AD to prevent autopilot engagement under unreliable airspeed conditions, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by August 22, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:*
- Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7424; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7424; Directorate Identifier 2015–NM–173–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0124R1, dated February 2, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

> It was determined that, when there are significant differences between all airspeed sources, the flight controls of an Airbus A330 or A340 aeroplane will revert to alternate law, the autopilot (AP) and the auto-thrust (A/THR) automatically disconnect, and the Flight Directors (FD) bars are automatically removed. Further analyses have shown that, after such an event, if two airspeed sources become similar while still erroneous, the flight guidance computers will display the FD bars again, and enable the re-engagement of AP and A/THR. However, in some cases, the AP orders may be inappropriate, such as possible abrupt pitch command. In order to prevent such events which may, under specific circumstances, constitute an unsafe condition, EASA issued AD 2010–0271 [which corresponds to FAA AD 2011–02–09, Amendment 39–16583 (76 FR 4219, January 25, 2011)] to require an amendment of the Airplane Flight Manual (AFM) to ensure that flight crews apply the appropriate operational procedure.
>
> Since EASA AD 2010–0271 was issued, new Flight Control Primary Computer (FCPC) software standards were developed that inhibit autopilot engagement under unreliable airspeed conditions. Consequently, EASA issued AD 2011–0199 (later revised) [which corresponds to FAA AD 2013–19–14, Amendment 39–17596 (78 FR 68347, November 14, 2013)] for A330 and A340–200/300 aeroplanes, and AD 2013–0107 [which also corresponds to FAA AD 2013–19–14], for A340–500/600 aeroplanes to require a software standard upgrade of the three FCPCs by either modification or replacement.
>
> Since EASA AD 2011–0199R1 and AD 2013–0107 were issued, new FCPC software standards, as specified in Appendix 1 of this [EASA] AD, were developed to correct aeroplane behaviour in case of undetected erroneous (Radio Altimeter) RA information and to introduce other improvements. In addition, the new FCPC software standards implement enhanced Angle of Attack (AOA) monitoring in order to better detect cases of AOA blockage, including multiple AOA blockage.
>
> For the reasons described above, EASA issued AD 2015–0124 to require the latest software standard upgrade of the three FCPCs, by either modification or replacement.
>
> At the time [EASA] AD 2015–0124 was issued, some of the Airbus SBs listed in Appendix 1 were not available. Since, some have been published, and for this reason, this [EASA] AD is revised to introduce the date of publication of these SBs.
>
> There are still two SBs that remain unavailable at this time. It is expected that this [EASA] AD will be revised again when these SBs are published.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7424.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information:

- Service Bulletin A330–27–3205, Revision 02, dated March 23, 2016.
- Service Bulletin A320–27–3207, dated June 30, 2015.
- Service Bulletin A340–27–4195, dated November 24, 2015.
- Service Bulletin A340–27–4196, dated November 24, 2015.

The service information describes procedures for upgrading (replacing or modifying) the software standards for the FCPCs. The service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Differences Between This Proposed AD and the MCAI or Service Information

Paragraph (7) of EASA AD 2015–0124R1, dated February 2, 2016, is specific to Model A330 airplanes that were modified in service to a multi-role transport tanker (MRTT) configuration using Airbus Service Bulletin A330–27–3156. This Model A330 is not type-validated by the FAA. Therefore, we have not included the provisions for the Model A330 MRTT airplanes in this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 92 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification/replacement	3 work-hours × $85 per hour = $255.	Not available	$255	$23,460

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2016–7424; Directorate Identifier 2015–NM–173–AD.

(a) Comments Due Date

We must receive comments by August 22, 2016.

(b) Affected ADs

This AD affects the ADs identified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD:

(1) AD 2012–08–02, Amendment 39–17018 (77 FR 24829, April 26, 2012) ("AD 2012–08–02").

(2) AD 2013–03–06, Amendment 39–17341 (78 FR 15279, March 11, 2013) ("AD 2013–03–06").

(3) AD 2013–05–08, Amendment 39–17380 (78 FR 27015, May 9, 2013; corrected August 29, 2013 (78 FR 53237)) ("AD 2013–05–08").

(4) AD 2013–19–14, Amendment 39–17596 (78 FR 68347, November 14, 2013) ("AD 2013–19–14").

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(7) of this AD, all manufacturer serial numbers.

(1) Model A330 –223F and –243F airplanes.

(2) Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A340–211,—212, and –213 airplanes.

(5) Model A340–311, –312, and –313 airplanes.

(6) Model A340–541 airplanes.

(7) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a determination that, due to significant differences among all airspeed sources, the flight controls will revert to alternate law, the autopilot (AP) and the auto-thrust (A/THR) will automatically disconnect, and the flight director (FD) bars will be automatically removed. Then, if two airspeed sources become similar while still erroneous, the flight guidance computers will display the FD bars again, and enable the re-engagement of the AP and A/THR. In some cases, however, the AP orders may be inappropriate, such as possible abrupt pitch command. We are issuing this AD to prevent autopilot engagement under unreliable airspeed conditions, which could result in reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) New Software Standard Upgrade for Model A330 Series Airplanes, and Model A340–200 and –300 Series Airplanes

At the applicable time specified in figure 1 to paragraph (g) of this AD: Upgrade (by modification or replacement, as applicable) the three flight control primary computers (FCPCs), as specified in figure 1 to paragraph (g) of this AD, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, except for Model A340–500 and –600 series airplanes with hardware standard FCPC 2K2, do the upgrade in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

FIGURE 1 TO PARAGRAPH (g) OF THIS AD—SOFTWARE STANDARD UPDATES AND COMPLIANCE TIMES

Software standard	Hardware standard	Compliance time after effective date of this AD
P13/M22	FCPC 2K2	Within 9 months.
P14/M23	FCPC 2K1	Within 9 months.
M23	FCPC 2K0	Within 9 months.
L24	FCPC 2K1 or 2K0.	Within 15 months.
L23	FCPC 2K2	Within 15 months.
W13	FCPC 2K2	Within 15 months.

(h) Service Information

For the upgrade required by paragraph (g) of this AD, applicable service information is identified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD.

(1) For Model A330 airplanes with hardware standard FCPC 2K2: Airbus Service Bulletin A330–27–3205, Revision 02, dated March 23, 2016.

(2) For Model A330 airplanes with hardware standard FCPC 2K1 or FCPC 2K0: Airbus Service Bulletin A330–27–3207, dated June 30, 2015.

(3) For Model A340–200 and –300 series airplanes with hardware standard FCPC 2K0 or FCPC 2K1: Airbus Service Bulletin A340–27–4195, dated November 24, 2015.

(4) For Model A340–200 and –300 series airplanes with hardware standard FCPC 2K2: Airbus Service Bulletin A340–27–4196, dated November 24, 2015.

(i) Removal of Certain Airplane Flight Manual (AFM) Requirements

After accomplishing the FCPC upgrade required by paragraph (g) of this AD, the AFM operational procedures required by the AFM revisions identified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD are no longer required and can be removed from the AFM for that airplane only.

(1) The AFM revision required by paragraph (g) of AD 2013–03–06.

(2) The AFM revision required by paragraph (g) of AD 2013–19–14.

(3) The AFM revision required by paragraph (h) of AD 2013–19–14.

(j) Removal of Certain Other AFM Requirements

Accomplishing the FCPC upgrade required by paragraph (g) of this AD terminates the dispatch limitations required by paragraphs (g), (h), and (i) of AD 2012–08–02 for that airplane only, and after accomplishing the FCPC upgrade, those dispatch limitations can be removed from the AFM for that airplane only.

(k) Certain Actions Required by AD 2013–05–08 Affected by This AD

Accomplishing the FCPC upgrade required by paragraph (g) this AD constitutes compliance with the requirements of paragraph (l) and paragraphs (o)(1) through (o)(4) of AD 2013–05–08.

(l) Certain Actions Required by AD 2013–19–14 Affected by This AD

Accomplishing the FCPC upgrade required by paragraph (g) this AD constitutes compliance with the requirements of paragraphs (i) and (j) of AD 2013–19–14.

(m) Airplanes Excluded From Certain Requirements

For Airbus Model A330 series airplanes having Airbus Modification 202680 (installation of FCPC 2K2 with software standard P13/M22) incorporated in production: The actions specified in paragraph (g) of this AD are not required, provided it can be positively determined that since the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness, no FCPC has been replaced on that airplane with an FCPC having an earlier standard.

(n) Credit for Previous Actions

This paragraph provides credit for the applicable actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–27–3205, dated March 9, 2015; or Airbus Service Bulletin A330–27–3205, Revision 01, dated July 3, 2015; which are not incorporated by reference in this AD.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.: Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0124R1, dated February 2, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7424.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 23, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15907 Filed 7–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8160; Directorate Identifier 2016–CE–019–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Embraer S.A. Models EMB–500 and EMB–505 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrect installation of passenger seat attachment fittings. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 22, 2016.

ADDRESSES: You may send comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Embraer—S.A., Phenom Maintenance Support, Avenida Brigadeiro Faria Lima, 2170, São José dos Campos—SP—12227–901, P.O. Box 36/2, Brasil; phone: +55 12 3927 1000; fax: +55 12 3927–2619; email: *phenom.reliability@embraer.com.br;* Internet: *http://www.embraer.com.br/en-US/Pages/home.aspx*. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8160; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–8160; Directorate Identifier 2016–CE–019–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued AD No.: 2016–05–01, dated May 27, 2016 (referred to after this as "the MCAI"), to correct an unsafe condition for Embraer S.A. Models EMB–500 and EMB–505 airplanes and was based on mandatory continuing airworthiness information originated by an aviation authority of another country. The MCAI states:

> There is the possibility that certain attachment fittings of passenger seats have been incorrectly installed. This AD results from a determination that the passenger seat on which the attachment fittings were improperly installed may not meet certain static strength, and dynamic strength criteria. Failure to meet static and dynamic strength criteria could result in injuries to the occupants during an emergency landing condition.
>
> This AD requires the inspection of each passenger seat for the correct installation of the attachment fittings and correction, if necessary.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8160.

Related Service Information Under 1 CFR Part 51

Embraer S.A. has issued Service Bulletin (SB) No.: 500–25–0016; and Embraer S.A. SB No.: 505–25–0020, both dated December 8, 2015. The service information describes procedures for inspection of the passenger seat attachment fittings and correction to the fittings if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 203 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $69,020, or $340 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours for a cost of $510 per product. We have no way of determining the number of products that may need these actions.

According to the manufacturer, all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

Embraer S.A.: Docket No. FAA–2016–8160; Directorate Identifier 2016–CE–019–AD.

(a) Comments Due Date

We must receive comments by August 22, 2016.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to Embraer S.A. Model EMB–500 airplanes, serial numbers 50000322, 50000324 through 50000328, 50000330 through 50000344, 50000346 through 50000350, and 50000353, certificated in any category; and Embraer S.A. Model EMB–505 airplanes, serial numbers 50500004 through 50500215, 50500217 through 50500245, 50500247 through 50500255, 50500257 through 50500259, 50500261 through 50500263, 50500265, and 50500267, certificated in any category.

(2) The airplanes identified in paragraph (c)(1) of this AD had passenger seats installed at manufacturer as listed in Embraer S.A. Service Bulletin (SB) No.: 500–25–0016, dated December 8, 2015; or Embraer S.A. SB No.: 505–25–0020, dated December 8, 2015. Since these are line replaceable units and the unsafe condition of this AD was originated during manufacturing, any passenger seat replaced during routine maintenance is not affected by the actions of this AD.

(d) Subject

Air Transport Association of America (ATA) Code 25: Equipment/Furnishing.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrect installation of passenger seat attachment fittings. We are issuing this proposed AD to detect and correct improperly installed seat attachment fittings, which could result in seat damage causing injury to occupants during an emergency landing condition.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (2) of this AD following the Accomplishment Instructions in Embraer S.A. Service Bulletin (SB) No.: 500–25–0016, dated December 8, 2015; or Embraer S.A. SB No.: 505–25–0020, dated December 8, 2015, as applicable:

(1) Within the next 30 months after the effective date of this AD, inspect each applicable passenger seat for the correct installation of attachment fittings.

(2) If any discrepancy is found during the inspection required in paragraph (f)(1) of this AD, before further flight, correct the discrepancy.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI Agência Nacional de Aviação Civil (ANAC) AD No.: 2016–05–01, dated May 27, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8160. For service information related to this AD, contact Embraer—S.A., Phenom Maintenance Support, Avenida Brigadeiro Faria Lima, 2170, São José dos Campos—SP—12227–901, P.O. Box 36/2, Brasil; phone: +55 12 3927 1000; fax: +55 12 3927–2619; email: *phenom.reliability@embraer.com.br;* Internet: *http://www.embraer.com.br/en-US/Pages/home.aspx.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on June 28, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15871 Filed 7–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0143; Directorate Identifier 2012–NM–113–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all Airbus Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R variant F airplanes. The NPRM proposed to require repetitive detailed inspections of the lower frame fittings, related investigative actions, and corrective actions if necessary. The NPRM was prompted by reports of cracks in the frame base fittings connecting the frame lower positions to the center wing box. This action revises the NPRM by replacing the proposed requirements with new repetitive detailed inspections for cracking of the lower frame fittings of the frame foot, and replacement with a new frame foot if cracking is found. This action also provides optional terminating action for the repetitive inspections. We are proposing this supplemental NPRM (SNPRM) to detect and correct cracking of the lower frame fittings, which could result in reduced structural integrity of the airplane. Since these actions impose an additional burden over those proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by August 22, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0143; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2014–0143; Directorate Identifier 2012–NM–113–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R variant F airplanes. The NPRM published in the **Federal Register** on March 19, 2014 (79 FR 15266) ("the NPRM").

The NPRM was prompted by reports of cracks in the frame base fittings connecting the frame lower positions to the center wing box. The NPRM proposed to require repetitive detailed inspections of the lower frame fittings, related investigative actions, and corrective actions if necessary.

Actions Since NPRM Was Issued

Since we issued the NPRM, we have determined that repairs to address cracking in the frame foot area found during accomplishment of the detailed inspection of the lower frame fittings specified in Airbus Service Bulletin A300–53–6111, Revision 05, including Appendix 01, dated January 28, 2013, are not adequate to prevent further cracking. The European Aviation Safety Agency, which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0217, dated October 30, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition on all Airbus Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R variant F airplanes. The MCAI states:

> During accomplishment of Airbus Service Bulletin (SB) A300–53–6111 (EASA AD 2012–0103), addressing detailed visual inspections of the lower frame fittings between Frame (FR) 41 and FR46, a crack was detected on one A300–600 aeroplane in the area 2 of the foot of FR46 at junction radius level.
>
> This frame, previously repaired due to a crack finding in the frame foot area 1, was not due to be inspected before reaching the post-repair inspection threshold, *i.e.* 45,400 flight cycles since repair embodiment.
>
> Further investigation determined that the repairs specified in Airbus SB A300–53–6111 were of limited effect to prevent cracking in the frame foot area 2.
>
> This condition, if not detected and corrected, could affect the structural integrity of the fuselage of all aeroplanes operated up to the extended service goal (ESG).
>
> As a temporary action and until an improvement of the existing repairs was made available, EASA issued AD 2012–0229 [AD * * *] to require a one-time detailed inspection (DET) of the frame feet that were repaired in accordance with Airbus SB

A300–53–6111, and the reporting of findings to Airbus.

Since that [EASA] AD was issued, a detailed study was performed resulting in the development of a new inspection programme.

Consequently, Airbus cancelled SB A300–53–6111 and replaced it with SB A300–53–6177, introducing repetitive DET of the lower frame fittings between FR41 and FR46 for the entire fleet. In addition to this new inspection programme, Airbus designed a new frame foot which can be installed on aeroplanes through Airbus SB A300–53–6176.

For the reasons described above, this [EASA] AD supersedes EASA AD 2012–0103, not retaining its requirements, and instead requires the new inspection programme for the lower frame fittings. This [EASA] AD also introduces an optional terminating action for the repetitive inspections required by the [EASA] AD.

Corrective actions include replacing any cracked lower frame fittings with a new frame foot. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating FAA–2014–0143.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A300–53–6177, dated May 20, 2015. The service information describes procedures for repetitive detailed inspections for cracking of the lower frame fittings between FR41 and FR46. Airbus has also issued Service Bulletin A300–53–6176, dated May 20, 2015. The service information describes procedures for replacing all lower frame feet between frame FR41 and FR46 with new, improved frame feet. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Comments

We gave the public the opportunity to participate in developing this proposed AD. We considered the comments received.

Request To Revise Method Used To Determine Compliance Times

United Parcel Service (UPS) requested that the compliance times in the proposed AD (in the NPRM) be revised to be less complex. UPS stated that the proposed compliance times contain a method known as "Average Flight Time" (AFT) which results in a variable flight hour limit and adds an unnecessary complexity to the threshold table and subsequent inspection actions. UPS added that use of the AFT method, along with a lack of standard procedures for implementing the AFT method would create uncertainty for operators and inspectors trying to determine the correct compliance time. UPS stated that a defined threshold and repetitive inspection interval would adequately provide for timely detection of possible damage.

We disagree with the commenter's request to revise the compliance times in this proposed AD. The compliance times in this proposed AD correspond with those in the MCAI AD, which refers to Airbus Service Bulletin A300–53–6177, dated May 20, 2015. In Airbus Service Bulletin A300–53–6177, dated May 20, 2015, the inspection thresholds and intervals are based on the accumulation of both flight cycles and flight hours, and are listed in tables appropriately grouping airplanes with average flight time utilization above 1.5 hours, and airplanes with average flight time utilization at or below 1.5 hours. We have determined these compliance times acceptable for this proposed AD.

However, we do acknowledge that a fixed compliance time for a fleet could be easier for operators to schedule and record compliance. Therefore, under the provisions of paragraph (j)(1) of this proposed AD, we will consider requests for approval of an alternative method of compliance (AMOC) if a proposal is submitted that is supported by technical data that includes fatigue and damage tolerance analysis. We have not changed this proposed AD in this regard.

Request To Remove Reporting Requirement

FedEx objected to the reporting requirement in the proposed AD (in the NPRM).

We infer that FedEx wants the reporting requirement removed. We disagree that the reporting requirement should be removed from this proposed AD. We have determined that reporting the inspection findings will enable the manufacturer to obtain better insight into the extent of the cracking. We have made no change to this proposed AD in this regard.

Request To Remove Requirement To Refer to This AD in Repair Approvals

UPS requested that we revise the proposed AD (in the NPRM) to remove the requirement to include the AD reference in repair approvals. UPS noted its concerns that the NPRM will increase requests for approval of alternative methods of compliance (AMOCs) and result in delays to other services and actions addressed by the FAA on a daily basis.

We agree with the commenter's request to remove from this proposed AD the requirement that repair approvals must specifically refer to this AD. Since late 2006, we have included a standard paragraph titled "Airworthy Product" in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD. The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the proposed AD (in the NPRM) we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase "its delegated agent" to include "the Design Approval Holder (DAH) with a State of Design Authority's design organization approval (DOA)" to refer to a DAH authorized to approve required repairs for the AD.

In its comments to the proposed AD (in the NPRM), UPS stated the following: "The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages or other approved EASA documents are acceptable for approving minor deviations (corrective actions) needed during accomplishment of a[n AD] mandated Airbus service bulletin."

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements.

However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an AMOC to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it "Contacting the Manufacturer." This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, EASA, or Airbus's EASA DOA.

The "Contacting the Manufacturer" paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility afforded previously by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the AD Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are "Required for Compliance" with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an AMOC.

FAA's Determination and Requirements of This SNPRM

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Costs of Compliance

We estimate that this SNPRM affects 123 airplanes of U.S. registry.

We estimate that it would take about 541 work-hours per product to comply with the basic requirements of this SNPRM, and 1 work-hour per product for reporting. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this SNPRM on U.S. operators to be $5,666,610, or $46,070 per product.

We estimate that the optional terminating modification would take about 529 work-hours and require parts costing $131,500, for a cost of $176,465.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2014–0143; Directorate Identifier 2012–NM–113–AD.

(a) Comments Due Date

We must receive comments by August 22, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R variant F airplanes; certificated in any category; all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of cracks in the frame base fittings connecting the frame lower positions to the center wing box. We are issuing this AD to detect and correct cracking of the lower frame fittings, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections and Replacement If Necessary

At the applicable time specified in paragraph 1.E., "Compliance," of Airbus Service Bulletin A300–53–6177, dated May 20, 2015, except where Airbus Service Bulletin A300–53–6177, dated May 20, 2015, specifies a compliance time "from issuance of Revision 04 of Service Bulletin A300–53–6111," this AD requires compliance within the specified compliance time after the effective date of this AD: Perform a detailed inspection for cracking of the lower frame fittings between frame (FR) 41 and FR46 of the frame foot, and if any crack is found, before further flight, replace with a new frame foot, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6177, dated May 20, 2015. Repeat the inspection thereafter at the applicable intervals specified in paragraph 1.E., "Compliance," of Airbus Service Bulletin A300–53–6177, dated May 20, 2015.

(h) Reporting

At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Submit a report of the findings (both positive and negative) of each inspection required by paragraph (g) of this AD. Send the report to Airbus Service Bulletin Reporting Online Application on Airbus World (*https://w3.airbus.com*).

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Optional Terminating Action

Replacement of all lower frame feet between FR41 and FR46, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6176, dated May 20, 2015, terminates the repetitive inspections required by paragraph (g) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–2125. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0217, dated October 30, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0143.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 23, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15928 Filed 7–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8161; Directorate Identifier 2016–CE–018–AD]

RIN 2120–AA64

Airworthiness Directives; REIMS AVIATION S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain REIMS AVIATION S.A. Model F406 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks found in the horizontal stabilizer rear attach structure and the vertical fin rear spar attach structure. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 22, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact ASI Aviation, Aérodrome de Reims Prunay, 51360 Prunay, France; telephone: +33 3 26 48 46 84; fax: +33 3 26 49 18 57; email: *contact@asi-aviation.fr;* Internet: *http://asi-aviation.fr/page-Accueil.html.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8161; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–8161; Directorate Identifier 2016–CE–018–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2016–0101, dated May 25, 2016 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Fatigue cracks and holes elongation were found on horizontal stabilizer fittings on F406 aeroplanes having accumulated more than 2 500 flight hours (FH).
>
> This condition, if not detected and corrected, could result in loss of structural integrity of the horizontal stabilizer fittings.
>
> To initially address this issue, DGAC France published AD 2001–161 to require repetitive visual inspections of the fittings, and, dependings on findings, replacement with a serviceable part.
>
> Since that AD was issued, during maintenance, cracks were found on a slice plate of horizontal stabilizer fittings. Consequently, ASI Aviation issued Service Bulletin (SB) CAB01–5 Revision 2 to provide instructions for additional eddy-current non-destructive test (NDT) inspections.
>
> For the reasons described above, this AD retains the requirements of DGAC France AD 2001–161, which is superseded, and requires the additional NDT inspections.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8161.

Related Service Information Under 1 CFR Part 51

ASI Aviation has issued Service Bulletin CAB01–5 Rev 2, dated December 3, 2015. The service information describes procedures for inspecting the horizontal stabilizer rear attach structure and the vertical fin rear spar attach structure for cracks and oversized bolt holes and making all necessary repairs and replacements. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 7 products of U.S. registry. We also estimate that it would take about 20.5 work-hours per product to comply with the basic inspections requirements of this proposed AD (18 work-hours to remove the horizontal stabilizer to gain access for the inspection and 2.5 work-hours to do the inspection). The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed inspection on U.S. operators to be $12,197.50, or $1,742.50 per product.

We estimate that it would take about 25 work-hours per product to reinstall the horizontal stabilizer after doing the proposed inspection and any proposed necessary repairs or replacements. Based on these figures, we estimate the cost of this proposed action on U.S. operators to be $14,875, or $2,125 per product.

In addition, we estimate any proposed necessary corrective actions as follows:

—Installing Service Kit SKRA406–11—Rev. 2 would take about 3 work-hours and require parts costing $65, for a cost of $320 per product. We have no way of determining the number of products that may need this action.

—Installing Service Kit SK406–137 (which superseded Service Kit SKRA406–12—Rev. 2) would take about 20 work-hours and require parts costing $2,000, for a cost of $3,800 per product. We have no way of determining the number of products that may need this action.

—Installing Service Kit SKRA406–13—Rev. 2 would take about 8 work-hours and require parts costing $1,800, for a cost of $2,480 per product. We have no way of determining the number of products that may need this action.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

REIMS AVIATION S.A.: Docket No. FAA–2016–8161; Directorate Identifier 2016–CE–018–AD.

(a) Comments Due Date

We must receive comments by August 22, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to REIMS AVIATION S.A. F406 airplanes, serial numbers F406–0001 through F406–0098, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 55: Stabilizers.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks found in the horizontal stabilizer rear attach structure and the vertical fin rear spar attach structure. We are issuing this AD to prevent structural failure of the horizontal stabilizer and/or the vertical fin rear spar attach structure, which could result in damage to the airplane and loss of control.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) At whichever of the compliance times specified in paragraphs (f)(1)(i) through (iii) of this AD that occurs the latest after the effective date of this AD, and repetitively thereafter every 2,400 hours time-in-service (TIS), do a visual and non-destructive test (NDT) inspection of the horizontal stabilizer splice plate assembly, part number (P/N) 6032183–1 or P/N 406–5518–32183–100 (as applicable), and the attach structure assembly P/N 6031210–1. Do the inspections following the Accomplishment Instructions in ASI Aviation Service Bulletin CAB01–5 Rev 2, dated December 3, 2015.

(i) Before accumulating 2,500 hours TIS; or

(ii) Within the next 100 hours TIS; or

(iii) At the next 600-hour inspection.

(2) If, during any inspection as required by paragraph (f)(1) of this AD, any oversized bolt hole or crack is detected on the horizontal stabilizer splice plate assembly or attach structure assembly, before further flight, repair or replace the affected part with a serviceable part following the Accomplishment Instructions in ASI Aviation Service Bulletin CAB01–5 Rev 2, dated December 3, 2015. After taking the necessary corrective action, continue with the repetitive inspection specified in paragraph (f)(1) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2016–0101, dated 25 May 25, 2016, and ASI Aviation Service Kit SKRA40611–Rev. 2, dated December 3, 2015, ASI Service Kit SK406–137, dated December 3, 2015 (which superseded ASI Aviation Service Kit SKRA406–12–Rev. 2, dated December 3, 2015), and ASI Aviation Service Kit SKRA406–13–Rev. 2, dated December 3, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8161. For service information related to this AD, contact ASI Aviation, Aérodrome de Reims Prunay, 51360 Prunay, France; telephone: +33 3 26 48 46 84; fax: +33 3 26 49 18 57; email: *contact@ask-aviation.fr;* Internet: *http://asi-aviation.fr/page-Accueil.html.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on June 28, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15862 Filed 7–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7423; Directorate Identifier 2016–NM–034–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 767–200, and –300 series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that the frame-to-floor-beam joints and frames common to shear ties at certain locations of fuselage structure are subject to widespread fatigue damage (WFD). This proposed AD would require repetitive inspections for cracking of the frame inner chords and webs common to the floor beam joint and at frames common to the shear ties at certain sections on the left and right fuselage sides, and corrective action if necessary. We are proposing this AD to detect and correct cracking of the frame inner chords and webs common to the floor beam joint and at frames common to the shear ties at certain sections on the left and right fuselage sides, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by August 22, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7423.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7423; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057 3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7423; Directorate Identifier 2016–NM–034–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as widespread fatigue damage. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

An evaluation by the DAH indicates that the frame to floor beam joints and frames common to shear ties at certain locations of fuselage structure are subject to WFD. This condition, if not corrected, could result in cracking of the frame inner chords and webs common to the floor beam joint and at frames common to the shear ties at certain sections on the left and right fuselage sides, which could result in reduced structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 767–53A0265, Revision 1, dated March 18, 2016. The service information describes procedures for doing a detailed inspection and a surface high frequency eddy current

(HFEC) inspection for cracking of the frame inner chord and web common to the floor beam joint in section 41 and 43 on the left and right sides, a detailed inspection and a surface HFEC inspection for cracking of the section 43 and 46 frames common to the shear ties on the left and right sides, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7423.

The phrase "corrective actions" is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Costs of Compliance

We estimate that this proposed AD affects 306 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	Up to 350 work-hours × $85 per hour = $29,750 per inspection cycle.	$0	Up to $29,750 per inspection cycle.	Up to $9,103,500 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–7423; Directorate Identifier 2016–NM–034–AD.

(a) Comments Due Date

We must receive comments by August 22, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 767–200, and –300 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53; Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the frame-to-floor-beam joints and frames common to shear ties at certain locations of fuselage structure are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct cracking of the frame inner chords and webs common to the floor beam joint and at frames common to the shear ties at certain sections on the left and right fuselage sides, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspections and Corrective Actions

Except as provided by paragraph (h) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–53A0265, Revision 1, dated March 18, 2016: Do the actions required in paragraphs (g)(1) and (g)(2) of this AD; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0265, Revision 1, dated March 18, 2016. Do all applicable corrective actions before further flight. Repeat the inspections specified in paragraphs (g)(1) and (g)(2) of this AD thereafter at the applicable intervals specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–53A0265, Revision 1, dated March 18, 2016.

(1) Do a detailed inspection and a surface high frequency eddy current (HFEC) inspection for cracking of the frame inner chord and web common to the floor beam joint in section 41 and 43 on the left and right sides.

(2) Do a detailed inspection and a surface HFEC inspection for cracking of the section 43 and 46 frames common to the shear ties on the left and right sides.

(h) Service Information Exception

Where Boeing Alert Service Bulletin 767–53A0265, Revision 1, dated March 18, 2016, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 767–53A0265, dated March 18, 2015. This service information is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 23, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–15914 Filed 7–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 151023986–6557–01]

RIN 0648–XE284

Pacific Island Pelagic Fisheries; 2016 U.S. Territorial Longline Bigeye Tuna Catch Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes a 2016 limit of 2,000 metric tons (mt) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Northern Mariana Islands). NMFS would allow each territory to allocate up to 1,000 mt each year to U.S. longline fishing vessels in a specified fishing agreement that meets established criteria. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. The proposed catch limits and accountability measures would support the long-term sustainability of fishery resources of the U.S. Pacific Islands.

DATES: NMFS must receive comments by July 22, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0140, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0140*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the proposed catch limits and accountability measures. The environmental analyses are available at *www.regulations.gov*. The information contained in the environmental analyses is not repeated here.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIRO Sustainable Fisheries, 808–725–5176.

SUPPLEMENTARY INFORMATION: NMFS proposes to specify a catch limit of 2,000 mt of longline-caught bigeye tuna for each U.S. participating territory in 2016. NMFS would also authorize each U.S. Pacific territory to allocate up to 1,000 mt of its 2,000-mt bigeye tuna limit to U.S. longline fishing vessels that are permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). Those vessels must be identified in a specified fishing agreement with the applicable territory. The Western Pacific Fishery Management Council recommended these specifications.

NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each U.S Pacific territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819 (Territorial catch and fishing effort limits). When NMFS projects that a territorial catch or allocation limit will be reached, NMFS would, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (if the territorial catch limit is projected to be reached), and/or vessels in a specified fishing agreement (if the allocation limit is projected to be reached).

NMFS will consider public comments on the proposed action and will announce the final specifications in the **Federal Register**. NMFS must receive any comments by the date provided in the **DATES** heading. NMFS may not consider any comments not postmarked or otherwise transmitted by that date. Regardless of the final specifications, all other management measures will continue to apply in the longline fishery.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the applicable FEPs, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed specification.

The proposed action would specify a 2016 limit of 2,000 metric tons (mt) (4,409,240 lb) of longline-caught bigeye tuna for each U.S. Pacific territory (American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI)). Without this catch limit, these U.S territories would not be subject to a limit because they, as Participating Territories to the Western and Central Pacific Fisheries Commission (WCPFC), do not have a bigeye tuna limit under international measures adopted by the WCPFC. NMFS would also allow each territory to allocate up to 1,000 mt (2,204,620 lb) of its 2,000 mt bigeye tuna limit each year to U.S. longline fishing vessels in a specified fishing agreement that meets established criteria set forth in 50 CFR 665.819. As an accountability measure, NMFS would monitor, attribute, and restrict (if necessary) catches of longline-caught bigeye tuna by vessels in the applicable U.S. territory (if the territorial catch limit is projected to be reached), or by vessels operating under the applicable specified fishing agreement (if the allocation limit is projected to be reached). Payments under the specified fishing agreements support fisheries development in the U.S. Pacific territories and the long-term sustainability of fishery resources of the U.S. Pacific Islands.

This proposed action would directly apply to longline vessels federally permitted under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (Pelagic FEP), specifically Hawaii longline limited entry, American Samoa longline limited entry, and Western Pacific general longline permit holders. As of June 2016, 139 vessels possessed Hawaii longline limited entry permits (out of 164 total permits), 40 possessed American Samoa longline limited entry permits (out of 60 total permits), and one vessel held a Western Pacific general longline permit.

According to landings information provided in the environmental assessment prepared in support of this action and logbook information, Hawaii-based longline vessels landed approximately 25,791,000 lb of pelagic fish valued at $93,963,000 in 2012 and 27,053,000 lb of pelagic fish valued at $88,552,000 in 2013. With 129 vessels making either a deep- or shallow-set trip in 2012, and 135 vessels in 2013, the ex-vessel value of pelagic fish caught by Hawaii-based longline fisheries averaged about $728,000 and $656,000 per vessel in 2012 and 2013 respectively. In 2014, 140 vessels made approximately 1,431 trips, with 19,115 sets, and 47,130,556 hooks. In 2015, 142 vessels made approximately 1,448 trips, with 18,469 sets, and 47,489,544 hooks. Final catch, landings, and revenue information for the Hawaii-based longline fleet in 2014 and 2015 are not yet available.

In 2013, 22 American Samoa longline vessels turned in logbooks reporting the landing of 162,444 pelagic fish (approximately 6 million lb) valued at $6,772,386. Albacore made up the largest proportion of pelagic landings in American Samoa at 4,525,453 lb and bigeye tuna comprised of 187,954 lb. With 22 active longline vessels, the ex-vessel value of pelagic fish caught by the American Samoa longline fishery averaged about $307,836 per vessel in 2013. With regard to Guam and CNMI, no longline fishing has occurred since 2011.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. Id. at 81194.

Based on this information, NMFS has determined that all vessels permitted federally under the Pelagic FEP are small entities, *i.e.,* they are engaged in the business of fish harvesting (NAICS 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $11 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels. The proposed action would potentially benefit Hawaii-based longline fishery participants by allowing them to fish under specified fishing agreements with a territory, which could extend fishing effort for bigeye tuna in the Western Pacific Ocean and provide more bigeye tuna for markets in Hawaii.

Amendment 7 to the Pelagic FEP established a process by which NMFS could specify catch and/or effort limits for pelagic fisheries in American Samoa, Guam and CNMI, regardless of whether the WCPFC adopts a limit for those entities or not. Amendment 7 also allows NMFS to authorize the government of each territory to allocate a portion of their catch and/or effort limits through territorial fishing agreements. Specifically, bigeye tuna landed by vessels included in a fishing agreement are attributed to the U.S territory to which the agreement applies, and not counted towards the U.S. bigeye tuna limit established by NMFS under a separate authority in 50 CFR part 300, subpart O.

In accordance with Federal regulations at 50 CFR part 300, subpart O, vessels that possess both an American Samoa and Hawaii longline permit are not subject to the U.S bigeye tuna limit. Therefore, these vessels may retain bigeye tuna and land fish in Hawaii after the date that NMFS projects the fishery would reach that limit. Further, catches of bigeye tuna made by such vessels are attributed to American Samoa, provided the fish was not caught in the U.S. EEZ around Hawaii. In 2015, all dual American Samoa/Hawaii longline permitted vessels were included in the fishing agreement with CNMI. Therefore, NMFS attributed bigeye catches by those vessels to the CNMI.

The 2016 U.S. bigeye tuna catch limit established in 50 CFR 300, Subpart O is 3,554 mt, which is about 1.5% higher than the 2015 limit. In 2015, the U.S. longline fishery was subject to a catch limit of 3,502 mt (WCPFC limit of 3,554 mt less the 2014 catch overage of 52 mt). NMFS closed the fishery on August 5, 2015, because the fishery reached the limit (80 FR 46515, July 28, 2015). However, effective October 9, 2015, NMFS specified the 2015 catch and allocation limits for the CNMI and all vessels in the Hawaii longline fleet immediately entered into a specified fishing agreement with the CNMI. NMFS forecasted vessels listed in the CNMI specified fishing agreement would reach the 1,000-mt allocation limit on November 30, 2015 and issued a notice that it would restrict retention of bigeye tuna by vessels identified in that agreement on that date (80 FR 74002, November 27, 2015). Effective November 25, 2015, NMFS specified the 2015 catch and allocation limit for Guam and all Hawaii longline vessels immediately entered into a second specified fishing agreement with Guam on that date. Preliminary data from PIFSC indicate that Hawaii longline vessels caught the entire 1,000-mt bigeye tuna allocation provided by the CNMI specified fishing agreement, but did not reach the 1,000 mt allocation limit provided by the Guam specified fishing agreement before the 2015 fishing year ended on December 31, 2015 (NMFS PIFSC unpublished data; Preliminary 2015 U.S. Part 1 annual report to the WCPFC).

Through this action, Hawaii-based longline vessels could again potentially enter into one or more fishing agreements with participating territories. This would enhance the ability of these vessels to extend fishing effort in the Western and Central Pacific Ocean and provide more bigeye tuna for markets in Hawaii. Providing opportunity to land bigeye tuna in Hawaii in the last quarter of the year when market demand is high will result in positive economic benefits for fishery participants and net benefits to the nation. Allowing participating territories to enter into specified fishing agreements under this action, provides benefits to the territories by providing funds for territorial fisheries development projects. In terms of the impacts of reducing the limits of bigeye tuna catch by longline vessels based in the territories from an unlimited amount to 2,000 mt, this is not likely to adversely affect vessels based in the territories.

Historical catch of bigeye tuna by the American Samoa longline fleet has been less than 2,000 mt, even including the catch of vessels based in American Samoa, catch by dual permitted vessels that land their catch in Hawaii, and catch attributed to American Samoa from U.S. vessels under specified fishing agreements (which occurred in 2011 and 2012). With regard to Guam and CNMI, no longline fishing has occurred since 2011.

Under the proposed action, longline fisheries managed under the Pelagic FEP are not expected to expand substantially nor change the manner in which they are currently conducted, (*i.e.*, area fished, number of vessels longline fishing, number of trips taken per year, number of hooks set per vessel during a trip, depth of hooks, or deployment techniques in setting longline gear), due to existing operational constraints in the fleet, the limited entry permit programs, and protected species mitigation requirements. The proposed rule does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small organizations or government jurisdictions. Furthermore, there would be little, if any, disproportionate adverse economic impacts from the proposed rule based on gear type, or relative vessel size. The proposed rule also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under the procedures of E.O. 12866 because this action contains no implementing regulations.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 30, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–16013 Filed 7–6–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.: 160225146–6146–01]

RIN 0648–BF80

Fisheries of the Exclusive Economic Zone Off Alaska; Observer Coverage Requirements for Bering Sea and Aleutian Islands Management Area Trawl Catcher Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing regulations to modify observer coverage requirements for catcher vessels participating in the trawl limited access fisheries in the Bering Sea and Aleutian Islands management area (BSAI). If approved, this proposed rule would allow the owner of a trawl catcher vessel to request, on an annual basis, that NMFS place the vessel in the full observer coverage category for all directed fishing for groundfish using trawl gear in the BSAI in the following calendar year. This action is necessary to relieve vessel owners who request full observer coverage of the reporting requirements and observer fee liability associated with the partial observer coverage category. In addition, this proposed rule makes minor technical corrections to observer program regulations. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), and other applicable laws.

DATES: Submit comments on or before August 8, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–

NMFS–2016–0020, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0020,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis) and the Categorical Exclusion prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address; by email to *OIRA_Submission@omb.eop.gov;* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Alicia M Miller, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries of the BSAI under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared the BSAI FMP pursuant to the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). Regulations implementing the BSAI FMP appear at 50 CFR part 679.

This proposed rule is consistent with Section 3.2.4.1 of the BSAI FMP. Section 3.2.4.1 requires observer coverage for trawl catcher vessels in the BSAI groundfish fisheries and describes which vessels and processors are in the full observer coverage category and which are in the partial observer coverage category. Section 3.2.4.1 also authorizes that exceptions to these classifications may be implemented through regulations. The Council recommended and NMFS concurs that this proposed rule would authorize an exception to allow the owner of a trawl catcher vessel in the partial observer coverage category to request placement in the full observer coverage category, and that this exception could be implemented through a regulatory amendment without the need to amend the BSAI FMP.

Background

If approved, this proposed rule would amend North Pacific Groundfish and Halibut Observer Program (Observer Program) regulations to allow the owner of a trawl catcher vessel to request, on an annual basis, that NMFS place the vessel in the full observer coverage category for all directed fishing for groundfish using trawl gear in the BSAI in the following calendar year. This proposed rule would relieve trawl catcher vessel owners who request full observer coverage of the observer fee liability and reporting requirements associated with the partial observer coverage category. This proposed rule would establish a regulatory process to allow a trawl catcher vessel owner, on an annual basis, to request that NMFS place the vessel in the full observer coverage category for all directed fishing for groundfish using trawl gear in the BSAI in the following calendar year. This proposed rule is intended to provide flexibility to the owner of a trawl catcher vessel by allowing a vessel owner to request, on an annual basis, placement in the full observer coverage category; doing so would provide additional observer data. Implementation of this proposed rule would benefit the owners and operators of trawl catcher vessels that participate in the BSAI limited access fisheries while continuing to allow NMFS to collect the data necessary to conserve and manage the BSAI groundfish fisheries.

The following sections describe (1) the Observer Program, (2) the need for the proposed action, and (3) this proposed rule.

The Observer Program

Regulations implementing the Observer Program require observer coverage on fishing vessels and at processing plants to allow NMFS-certified observers (observers) to obtain information necessary for the conservation and management of the BSAI and Gulf of Alaska groundfish and halibut fisheries. Observers collect biological samples and fishery-dependent information on total catch and fishing vessel interactions with protected species. Managers use data collected by observers to monitor quotas, manage groundfish catch and bycatch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

The Observer Program was implemented in 1990 (55 FR 4839, February 12, 1990). In 2013, NMFS restructured the funding and deployment systems of the Observer Program (77 FR 70062, November 21, 2012). Under the restructured Observer Program, all vessels and processors in the groundfish and halibut fisheries off Alaska are placed into one of two categories: (1) The full observer coverage category, where vessels and processors obtain observer coverage by contracting directly with observer providers; and (2) the partial observer coverage category, where NMFS has the flexibility to deploy observers when and where they are needed, as described in the annual deployment plan that is developed by NMFS in consultation with the Council. As explained below, the deployment of observers in the partial observer coverage category is funded through a fee.

NMFS funds observer deployment in the partial observer coverage category by assessing a 1.25 percent fee on the ex-vessel value of retained groundfish and halibut from vessels that are not in the full observer coverage category. This observer fee is based on the total ex-vessel value of landed catch and calculated using a standardized price from the prior year's landings. NMFS intends that the fee be split equally between the processor receiving landed catch and the vessel harvesting the catch. The processor collects the vessel owner's portion of the observer fee and submits full payment to NMFS after the end of the year. More information about the observer fee for the partial observer coverage category is provided in the most recent annual notice of the standard ex-vessel prices for the observer fee (80 FR 77606; December 15, 2015), and in the final rule implementing the restructured observer program (77 FR 70062, November 21, 2012).

When the Observer Program was restructured, the Council and NMFS decided, based on data needs and costs, which vessels and processors to place in the full and partial observer coverage categories. Regulations implementing the restructured observer program in 2013 placed all trawl catcher vessels in the full observer coverage category when participating in a catch share program with transferable prohibited species catch (PSC) limits (77 FR 70062, November 21, 2012). For trawl catcher vessels in the BSAI, the catch share programs with transferable PSC limits are the American Fisheries Act (AFA) pollock fisheries in the Bering Sea and the Western Alaska Community Development Quota (CDQ) groundfish fisheries. All other trawl catcher vessels subject to observer coverage requirements in the BSAI are in the partial observer coverage category and participate in the BSAI trawl limited access fisheries.

Throughout this proposed rule, the trawl fisheries in the BSAI that are not part of a catch share program mentioned in the previous paragraph are referred to collectively as "the BSAI trawl limited access fisheries". Vessels participating in the BSAI trawl limited access fisheries primarily target Pacific cod or yellowfin sole. NMFS does not allocate transferable PSC limits to trawl catcher vessels in the BSAI trawl limited access fisheries; therefore, trawl catcher vessels are placed in the partial observer coverage category when participating in these fisheries. The BSAI trawl limited access fisheries are managed with halibut and crab PSC limits that apply to the directed fishery as a whole or to operational category and gear type. Section 3.5 in the Analysis provides additional information about the BSAI trawl limited access fisheries, the Observer Program, and observer coverage categories.

Need for the Proposed Action

The Council initiated this proposed action in response to comments on the proposed rule to restructure the Observer Program (77 FR 23326, April 18, 2012), and testimony to the Council. As detailed in the final rule for the restructured program, (77 FR 70062, November 21, 2012), some participants in the BSAI trawl limited access fisheries commented that their catcher vessels needed full (100 percent) observer coverage while directed fishing for Pacific cod. Full observer coverage, according to the participants, was necessary to comply with private contractual arrangements contained in their voluntary AFA agreements to manage halibut PSC at the vessel and cooperative level. Specifically, trawl catcher vessel owners expressed concern that if their vessels were placed in the partial observer coverage category and not randomly selected for observer coverage, a vessel owner would have to use halibut PSC rates extrapolated from other observed vessels for its halibut PSC accounting within the cooperative. Some vessel owners wanted the option to carry an observer on all fishing trips (*i.e.,* full observer coverage) so that observer data from the vessel could be used to provide vessel-specific halibut PSC accounting.

Participants in the BSAI trawl limited access fisheries also testified that allowing trawl catcher vessels to continue to carry an observer on all trips, as they had prior to Observer Program restructuring in 2013, would allow them to shift seamlessly between the AFA pollock trawl fishery where full observer coverage is required and other fisheries such as the BSAI Pacific cod limited access trawl fishery where only partial observer coverage is required. Participants in the BSAI trawl limited access fisheries testified that under the full observer coverage category requirements, a trawl catcher vessel owner could contract with the same observer provider in both the AFA pollock trawl and other BSAI trawl limited access fisheries. This operational efficiency would allow vessel owners and operators to coordinate with a single observer provider when moving between the AFA pollock fishery and the BSAI trawl limited access fisheries.

In a response to these comments on the restructured program, NMFS stated that neither the Council's motion nor the proposed rule for restructuring the Observer Program addressed an allowance for voluntary participation in the full observer coverage category (77 FR 70062, November 21, 2012). Therefore, this type of change could not be made in the final rule for the Observer Program restructuring. NMFS described that further analysis and a subsequent rulemaking would be needed to revise regulations to authorize vessel owners to request placement in the full observer coverage category and to relieve these vessel owners and associated processors from the observer fee liability for landings by trawl catcher vessels in the partial observer coverage category. NMFS highlighted the need to analyze the placement of vessels in a particular coverage category not only in terms of the economic impacts on a vessel owner, but also in terms of impacts on the fee base for the partial observer coverage category.

Since 2013, and with the concurrence of the Council, NMFS has allowed the owner of a BSAI trawl catcher vessels to request, on an annual basis, full observer coverage by submitting a letter of request to NMFS. Under this interim policy, a vessel owner could request, by December 1, to have a trawl catcher vessel comply with full observer coverage requirements in the following calendar year. Vessel owners then contract with a full coverage observer provider for all directed fishing for groundfish using trawl gear in the BSAI in the following year.

By regulation, catcher vessels participating in the BSAI trawl limited access fisheries are in the partial observer coverage category, and those landings are subject to the partial observer coverage fee liability as well as the requirement to log fishing trips in the Observer Declare and Deploy System (ODDS). ODDS is the internet-based communication platform that NMFS uses to receive information about fishing plans by vessels in the partial observer coverage category and to notify vessel owners if a fishing trip has been randomly selected for observer coverage. The owner and operator of a catcher vessel placed in the full observer coverage category are not required to log fishing trips in ODDS.

Under the interim policy, the owner of a trawl catcher vessel complies with full observer coverage requirements, but is not placed in the full observer coverage category by regulation and therefore, is required to comply with the partial observer coverage category reporting requirements and associated observer fee liability. This results in duplicative observer coverage costs and additional reporting requirements for those vessel owners that requested full observer coverage under the interim policy.

In February 2016, the Council unanimously recommended that NMFS revise regulations to allow the owner of a BSAI trawl catcher vessel in the partial observer coverage category to request, on an annual basis, that NMFS place the catcher vessel in the full observer coverage category for all directed fishing for groundfish using trawl gear in the BSAI for the following year. Any trawl catcher vessel that NMFS did not place in the full observer coverage category would remain in the partial observer coverage category under existing regulations at §§ 679.50 and 679.51. Once NMFS notifies a catcher vessel owner that the catcher vessel has been placed in the full observer coverage category, the catcher vessel operator would then be subject to full observer coverage requirements described at § 679.51(a)(2) for all directed fishing for groundfish using trawl gear in the BSAI in the following year.

The rationale for the two major provisions of the proposed rule follows below. Alternatives, options, and suboptions considered but not selected by the Council are explained in more detail in the "Classification" section of this preamble.

1. Annual Request for Full Observer Coverage

This proposed rule would allow the owner of a trawl catcher vessel to annually request full observer coverage in lieu of partial observer coverage for directed fishing for groundfish using trawl gear in the BSAI in the following year. This closely aligns with the interim policy, in place since 2013, under which NMFS allows the owner of a BSAI trawl catcher vessel to annually request full observer coverage for all directed fishing for groundfish using trawl gear in the BSAI in the following year. This proposed rule would establish a regulatory process to allow the owner of a trawl catcher vessel to submit a request for full observer coverage to NMFS by October 15 of the year prior to the year in which the catcher vessel would be placed in the full observer coverage category. NMFS would then place the vessel in the full observer coverage category for all directed fishing for groundfish using trawl gear in the following year. This annual request is consistent with the Council's and NMFS' previous decision to require full observer coverage on catcher vessels only in fisheries with transferable PSC limits. The owner of a trawl catcher vessel could request the appropriate observer coverage category that would meet their private contractual agreements.

This proposed rule would not restrict which trawl catcher vessel owners could request full observer coverage, allowing the owner of any trawl catcher vessel to request full observer coverage for all directed fishing for groundfish using trawl gear in the BSAI in the following year. The Council considered restricting the option to AFA trawl catcher vessels because those are the vessels that have, thus far, requested full observer coverage under the interim policy. However, the Analysis did not identify any reason to restrict which BSAI trawl catcher vessel owners may request to increase their observer coverage requirements (see Section 3.7.3 and Section 3.7.4 of the Analysis for additional detail).

Section 3.7 of the Analysis describes the potential impact of the proposed rule on the costs of observer coverage, fee receipts, and observer deployment rates in the partial observer coverage category if NMFS approves trawl catcher vessel owners' requests and places the vessels in the full observer coverage category. Section 3.7 of the Analysis describes that this proposed rule could result in some cost savings and reduced administrative burden for trawl catcher vessel owners and operators, some slightly reduced fee receipts for the partial observer coverage category, and some potential for a limited decrease in observer deployment rates in the partial observer coverage category relative to current management. Observer deployment for vessels and processors in the partial observer coverage category will continue to be analyzed and evaluated in the Observer Program annual deployment plan and the Observer Program Annual Report.

This proposed rule would not alter existing observer coverage requirements for trawl catcher vessels delivering unsorted codends to a mothership in the BSAI. A trawl catcher vessel delivering unsorted codends to a mothership is not required to carry an observer because the catch is not brought onboard the catcher vessel, but is sorted aboard the mothership with full observer coverage.

2. Annual Deadline

This proposed rule would establish an annual deadline of October 15 for a trawl catcher vessel owner to request placement in the full observer coverage category for the following year. This deadline is earlier than the current deadline of December 1 under the interim policy. The October 15 deadline is necessary to balance the need to improve information available to analysts during the final preparations of the partial observer coverage annual deployment plan with the need to allow vessel owners the time to make business decisions for the following year. The October 15 deadline also provides full coverage observer providers adequate time to coordinate observer availability for the following year. Sections 3.6 and 3.7.1.2 of the Analysis provide additional detail on the rationale for the October 15 deadline and describe alternative deadlines that were considered but not proposed.

This Proposed Rule

This proposed rule would revise regulations at 50 CFR part 679 to establish a process to allow the owner of a trawl catcher vessel to request, on an annual basis, that NMFS place the vessel in the full observer coverage category for all directed fishing for groundfish using trawl gear in the BSAI in the following calendar year. This proposed rule would add a paragraph at § 679.51(a)(2)(i)(C)(*4*) describing a new vessel type under the list of catcher vessels in the full observer coverage category to allow this annual request for placement in the full observer coverage category for one year. This proposed rule adds a new paragraph at § 679.51(a)(4) to describe the requirements for this annual process.

The owner of a trawl catcher vessel that requests full observer coverage in lieu of partial observer coverage for all directed fishing for groundfish in the BSAI trawl limited access fisheries in the following year would submit a request to NMFS using ODDS, which is described at § 679.51(a)(1)(ii). Once a request is received, NMFS would consider the request and would notify the vessel owner whether the request has been approved or denied. This notification would occur through ODDS. Once NMFS has notified the vessel owner that a request to be placed in the full observer coverage category for the following year has been approved, the owner and operator of the trawl catcher vessel would be subject to full observer coverage requirements as described at § 679.51(a)(2) for all directed fishing for groundfish using trawl gear in the BSAI in the following year. Once approved by NMFS for placement in the full observer coverage category, a trawl catcher vessel could not be placed in the partial observer coverage category until the next year. Until NMFS provides notification of approval, a catcher vessel would remain in the partial observer coverage category as described at § 679.51(a)(1)(i).

The owner of a trawl catcher vessel placed in the full observer coverage category would contract directly with a permitted full coverage observer provider to procure observer services as described at § 679.51(d). The owner of a trawl catcher vessel in the full observer coverage category would not be required to log fishing trips in ODDS under § 679.51(a)(1), and landings made by a vessel in the full observer coverage category would not be subject to the 1.25 percent partial observer coverage fee under § 679.55.

This proposed rule would establish an annual deadline of October 15 for a trawl catcher vessel owner to request that a trawl catcher vessel operating in the BSAI be placed in the full observer coverage category for the following year as described in proposed regulations at § 679.51(a)(4)(iii). A vessel owner would be required to submit a request for full observer coverage by the October 15 annual deadline. NMFS would approve all requests that contained the information required by ODDS and were submitted on or before October 15. If NMFS disapproves a request to place a catcher vessel in the full observer coverage category, the catcher vessel would remain in the partial observer coverage category as described at § 679.51(a)(1)(i).

The proposed rule specifies at proposed § 679.51(a)(4)(v) that if NMFS denies a request for placement in the full observer coverage category, NMFS would issue an Initial Administrative Determination, which would explain in writing the reasons for the denial. Under proposed § 679.51(a)(3)(vi), the vessel owner could appeal a denial to the National Appeals Office according to the procedures in 15 CFR part 906.

This proposed rule would make minor technical corrections to Observer Program regulations. This proposed rule would correct inaccurate cross references in §§ 679.84 and 679.93 to observer coverage requirements in § 679.51. This proposed rule would also standardize references to the observer sampling station and the Observer Sampling Manual throughout part 679, and update check-in/check-out report submission methods by removing a discontinued email address in § 679.5.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A further description of the action, why it is being considered, and the legal basis for this action are explained earlier in the preamble to this proposed rule. A copy of the IRFA is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

This proposed rule would directly regulate the owners of trawl catcher vessels that participate in the BSAI groundfish limited access fisheries. The Small Business Administration has established size standards for all major industry sectors in the United States.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

This proposed rule would provide the owners of BSAI trawl catcher vessels that currently are placed in the partial observer coverage category the opportunity for placement in the full observer coverage category. One-hundred catcher vessels used trawl gear in the BSAI in 2014. NMFS estimates that 13 of these trawl catcher vessels would be directly regulated small entities. The owners of three of these catcher vessels requested to be placed in the full observer coverage category for all their BSAI groundfish fishing during at least one year from 2013 through 2015.

This proposed rule proposes one new reporting requirement and eliminates one reporting requirement for a vessel owner who requests placement of their vessel in the full observer coverage category for a year. Any trawl catcher vessel owner who requests placement of their trawl catcher vessel in the full observer coverage category would be required to submit a request to NMFS. This request would be a new reporting requirement, and would only apply to those catcher vessel owners who request placement of their vessel in the full observer coverage category. The reporting requirement to log fishing trips in ODDS does not apply to vessels in the full observer coverage category; therefore, this proposed rule would remove a reporting requirement for these directly regulated small entities to log fishing trips in ODDS.

The RFA requires identification of any significant alternatives to this proposed rule that accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. As noted in the IRFA, this proposed rule is expected to create a net benefit for the directly regulated small entities because it offers trawl catcher vessel owners an opportunity to change their observer coverage category. The benefits of this proposed rule to trawl catcher vessel owners are expected to outweigh the costs of paying for an observer to be on board the vessel during all groundfish fishing in the BSAI, and the cost of the annual request to NMFS. If the benefits to a catcher vessel owner do not outweigh the costs, a catcher vessel owner can choose not to request that their vessel be placed in the full observer coverage category, and so would not be impacted by this proposed rule.

The Council considered the status quo (Alternative 1), and two action alternatives (Alternative 2 and Alternative 3). Alternative 3 included one option and three suboptions. The preferred alternative (Alternative 3 with Suboption 3) described in this proposed rule would provide the owners of BSAI trawl catcher vessels an option of requesting, on an annual basis, placement in the full observer coverage category rather than remaining in the partial observer coverage category. No new requirements would be imposed under the preferred alternative unless the catcher vessel owner requested the full observer coverage category. Of the action alternatives analyzed, the preferred alternative provides the most flexibility for the owner of a trawl catcher vessel to request full observer coverage in lieu of partial observer coverage.

Alternative 1 (status quo) would have continued to offer catcher vessel owners the option of carrying full observer coverage under the interim policy, but would not remove the requirement in regulations for continued payment of the partial observer coverage fee in addition to the cost of full observer coverage. Alternative 2 is more restrictive than the preferred alternative because it would have permanently placed AFA trawl catcher vessels in the full observer coverage category rather than offering the vessel owners an option to request full observer coverage on an annual basis. Alternative 3 Option 1 would have allowed only the owners of AFA trawl catcher vessels to request placement in the full observer coverage category, rather than providing the opportunity to the owners of all BSAI trawl catcher vessels. Alternative 3 Suboption 1 would have established an earlier deadline to submit the request for full observer coverage than under the preferred alternative. Directly regulated small entities opposed the earlier deadline because they wanted more time to make business decisions about observer coverage in the following year. Alternative 3 Suboption 2 would have established a one-time request to be placed in the full observer coverage category rather than an annual request as is the case under the preferred alternative. In summary, the preferred alternative of Alternative 3, Suboption 3 (this proposed rule) offers the widest range of options to the widest range of directly regulated small entities, as compared to all other alternatives.

No relevant Federal rules have been identified that would duplicate or overlap with the proposed action.

Collection-of-Information Requirements

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648–0318. The public reporting burden for Request for Full Observer Coverage Category is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 28, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.51:

■ a. Revise paragraphs (a)(2)(i)(C)(*2*) and (*3*); and

■ b. Add paragraphs (a)(2)(i)(C)(*4*) and (a)(4).

The revisions and additions read as follows:

§ 679.51 Observer requirements for vessels and plants.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(C) * * *

(*2*) Using trawl gear or hook-and-line gear while groundfish CDQ fishing (see § 679.2), except for catcher vessels less than or equal to 46 ft LOA using hook-and-line gear while groundfish CDQ fishing under § 679.32(c)(3)(iii);

(*3*) Participating in the Rockfish Program; or

(*4*) Using trawl gear in the BSAI if the vessel has been placed in the full observer coverage category under paragraph (a)(4) of this section.

* * * * *

(4) *BSAI trawl catcher vessel placement in the full observer coverage category for one year*—(i) *Applicability.* The owner of a catcher vessel in the partial observer coverage category under paragraph (a)(1)(i) of this section may request to be placed in the full observer coverage category for all directed fishing for groundfish using trawl gear in the BSAI for a calendar year.

(ii) *How to request full observer coverage for one year.* A trawl catcher vessel owner must complete a full observer coverage request and submit it to NMFS using ODDS. ODDS is described in paragraph (a)(1)(ii) of this section.

(iii) *Deadline.* A full observer coverage request must be submitted by October 15 of the year prior to the calendar year in which the catcher vessel would be placed in the full observer coverage category.

(iv) *Notification.* NMFS will notify the vessel owner through ODDS of approval or denial to place a trawl catcher vessel in the full observer coverage category. Unless otherwise specified in paragraph (a)(2) of this section, a trawl catcher vessel remains in the partial observer coverage category under paragraph (a)(1)(i) of this section until a request to place a trawl catcher vessel in the full observer coverage category has been approved by NMFS. Once placement in the full observer coverage category is approved by NMFS, a trawl catcher vessel cannot be placed in the partial observer coverage category until the following year.

(v) *Initial Administrative Determination (IAD).* If NMFS denies a request to place a trawl catcher vessel in the full observer coverage category, NMFS will provide an IAD, which will explain the basis for the denial.

(vi) *Appeal.* If the owner of a trawl catcher vessel wishes to appeal NMFS' denial of a request to place a trawl catcher vessel in the full observer coverage category, the owner may appeal the determination under the appeals procedure set out at 15 CFR part 906.

* * * * *

§§ 679.5, 679.21, 679.28, 679.52, 679.53, 679.84, and 679.93 [Amended]

■ 3. At each of the locations shown in the "Location" column, remove the phrase indicated in the "Remove" column and add in its place the phrase indicated in the "Add" column.

Location	Remove	Add
§ 679.5(h)(1)	, or by e-mail to *erreports.alaskafisheries@noaa.gov.*	.
§ 679.21(c)(2)(i)(D)	observer sample station	observer sampling station
§ 679.28(d)(9)(ii)	observer sample station	observer sampling station
§ 679.52(b)(1)(iii)(B)(*2*)	observer manual	Observer Sampling Manual
§ 679.52(b)(2)(i)	Observer Manual	Observer Sampling Manual
§ 679.52(b)(11)(x)(A)(*4*)	observer manual	Observer Sampling Manual
§ 679.53(b)(2)(i)	Observer Manual	Observer Sampling Manual
§ 679.84(c)(3)	§ 679.50(c)(7)(i)	§ 679.51(a)(2)
§ 679.84(e)	§ 679.50(c)(7)(ii)	§ 679.51(a)(2)
§ 679.84(f)(1)	§ 679.50(c)(7)(ii)	§ 679.51(a)(2)

Location	Remove	Add
§ 679.84(f)(2)	§ 679.50(c)(7)(ii)	§ 679.51(a)(2)
§ 679.93(c)(3)	§ 679.50(c)(6)	§ 679.51(a)(2)
§ 679.93(c)(6)	observer sample station	observer sampling station
§ 679.93(d)(2)	§ 679.50(c)(6)(ii)	§ 679.51(a)(2)

[FR Doc. 2016–15912 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 130
Thursday, July 7, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of a Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Foreign Agricultural Service's intention to request an extension for a currently approved information collection in support of the regulation providing for the issuance of certificates of quota eligibility (CQEs) required to enter sugar and sugar-containing products under the tariff-rate quotas (TRQs) into the United States.

DATES: Comments on this notice must be received by no later than September 6, 2016 to be assured of consideration.

ADDRESSES: We invite you to submit comments as requested in this document. In your comment, include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail, hand delivery, or courier:* William Janis, International Economist, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250–1021, STOP 1021; or by email at *William.Janis@fas.usda.gov;* or by telephone at (202) 720–2194; or fax to (202) 720–0876.

Comments will be available for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: William Janis, International Economist, Import Policies and Export Reporting Division, AgStop 1021, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–1021 or telephone (202) 720–2194, fax to (202) 720–0876, or email *William.Janis@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certificates for Quota Eligibility.

OMB Number: 0551–0014.

Expiration Date of Approval: March 31, 2017.

Type of Request: Extension of a currently approved information collection.

Abstract: Additional U.S. note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), established by Presidential Proclamation 6763 of December 1994, authorizes the Secretary of Agriculture to establish for each fiscal year the quantity of sugars and syrups that may be entered at the lower tariff rates of TRQs. This authority was proclaimed by the President to implement the results of the Uruguay Round of multilateral trade negotiations as reflected in the provisions of Schedule XX (United States), annexed to the Agreement Establishing the World Trade Organization (WTO). Under various free trade agreements (FTAs), the United States has agreed to require CQEs for the entry into U.S. customs territory of sugar and sugar-containing products. The authority for requiring these certificates is the Implementation Acts for the U.S.-Colombia and U.S.-Panama Trade Promotion Agreements set forth under 19 U.S.C. 3805.

The terms under which Certificates for Quota Eligibility (CQEs) will be issued to foreign countries that have been allocated a share of the WTO or have an allocation under a FTA TRQ are set forth in 15 CFR part 2011, Allocation of Tariff-Rate Quota on Imported Sugars, Syrups, and Molasses, Subpart A—Certificates of Quota. This regulation provides for the issuance of CQEs by the Secretary of Agriculture and in general prohibits sugar subject to the above-mentioned TRQs from being imported into the United States or withdrawn from a warehouse for consumption at the in-quota duty rates unless such sugar is accompanied by a valid CQE.

CQEs are distributed to foreign countries by the Director of the Import Policies and Export Reporting Division, Foreign Agriculture Service, or his or her designee. The distribution of CQEs is in such amounts and at such times as the Director determines are appropriate to enable the foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account harvesting periods, U.S. import requirements, and other relevant factors. The information required to be collected on the CQE is used to monitor and control the imports of products subject to the WTO and FTA sugar TRQs. A valid CQE, duly executed and issued by the Certifying Authority of the foreign country, is required for eligibility to enter the products into U.S. customs territory under the TRQs.

Estimate of burden: The public reporting burden for the collection directly varies with the number of CQEs issued.

Respondents: Foreign governments.

Estimated number of WTO respondents: 40.

Estimated number of FTA respondents: 2.

Estimated number of responses per respondent: 30 per fiscal year.

Estimated total annual reporting burden: 210 hours.

Requests for comments: Send comments regarding (a) Whether the information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Copies of this information collection may be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

FAS is committed to complying with the Government Paperwork Elimination Act which requires Government agencies, to the maximum extent feasible, to provide the public the option of electronically submitting information collection. CQEs permit exporters to ship raw cane sugar to the United States at the U.S. sugar price, which is ordinarily higher than the world sugar price. Therefore, in contrast to most information collection documents, CQEs have a monetary value equivalent to the substantial benefits to exporters. CQEs have always been carefully handled as secure documents and distributed only to foreign government-approved Certifying Authorities.

Signed at Washington, DC, on June 21, 2016.

Philip C. Karsting,

Administrator, Foreign Agricultural Service.

[FR Doc. 2016–16047 Filed 7–6–16; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of a Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Department's intention to request an extension for a currently approved information collection in support of the Export Sales Reporting program.

DATES: Comments should be submitted no later than September 6, 2016 to be assured of consideration.

ADDRESSES: We invite you to submit comments as requested in this document. In your comment, include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail, hand delivery, or courier:* Peter W. Burr, Branch Chief, Export Sales Reporting Branch, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, 1400 Independence Avenue SW., Washington, DC 20250–1021, STOP 1021; or by email at *Pete.Burr@fas.usda.gov;* or by telephone at (202) 720–3274; or fax to (202) 720–0876.

Comments will be available for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Confidentiality: All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Peter W. Burr, Branch Chief, Export Sales Reporting, STOP 1025, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–1025; or by telephone (202) 720–9209; or by email: *esr@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Sales (Reporting Program) of U.S. Agricultural Commodities.

OMB Number: 0551–0007.

Expiration Date of Approval: June 20, 2017.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 602 of the Agricultural Trade Act of 1978, as amended, (7 U.S.C. 5712) requires the reporting of information pertaining to contracts for export sale of certain specified agricultural commodities and other commodities that may be designated by the Secretary. In accordance with Sec. 602, individual weekly reports submitted shall remain confidential and shall be compiled and published in compilation form each week following the week of reporting. Any person who knowingly fails to report shall be fined not more than $25,000 or imprisoned for not more than 1 year, or both. Regulations at 7 CFR part 20 implement the reporting requirements, and prescribe a system for reporting information pertaining to contracts for export sales.

USDA's Export Sales Reporting System was created after the large unexpected purchase of U.S. wheat and corn by the Soviet Union in 1972. To make sure that all parties involved in the production and export of U.S. grain have access to up-to-date export information, the U.S. Congress mandated an export sales reporting requirement in 1973. Prior to the establishment of the Export Sales Reporting System, it was difficult for the public to obtain information on export sales activity until the actual shipments had taken place. This frequently resulted in considerable delay in the availability of information.

Under the Export Sales Reporting System, U.S. exporters are required to report all large sales of certain designated commodities by 3:00 p.m. (Eastern Time) on the next business day after the sale is made. The designated commodities for these daily reports are wheat (by class), barley, corn, grain sorghum, oats, soybeans, soybean cake and meal, and soybean oil. Large sales for all reportable commodities except soybean oil are defined as 100,000 metric tons or more of one commodity in 1 day to a single destination or 200,000 tons or more of one commodity during the weekly reporting period. Large sales for soybean oil are 20,000 tons and 40,000 tons, respectively.

Weekly reports are also required, regardless of the size of the sales transaction, for all of these commodities, as well as wheat products, rye, flaxseed, linseed oil, sunflowerseed oil, cotton (by staple length), cottonseed, cottonseed cake and meal, cottonseed oil, rice (by class), cattle hides and skins (cattle, calf, and kip), beef and pork. The reporting week for the export sales reporting system is Friday–Thursday. The Secretary of Agriculture has the authority to add other commodities to this list.

U.S. exporters provide information on the quantity of their sales transactions, the type and class of commodity, the marketing year of shipment, and the destination. They also report any changes in previously reported information, such as cancellations and changes in destinations.

The estimated total annual burden of 47,907 hours in the OMB inventory for the currently approved information collection remains unchanged.

Estimate of Burden: The average burden, including the time for reviewing instructions, gathering data needed, completing forms, and record keeping is estimated to be 30 minutes.

Respondents: All exporters of wheat and wheat flour, feed grains, oilseeds, cotton, rice, cattle hides and skins, beef, pork, and any products thereof, and other commodities that the Secretary may designate as produced in the United States.

Estimated Number of Respondents: 380.

Estimated Annual Number of Responses per Respondent: 252.

Requests for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Government Paperwork Elimination Act: FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Signed at Washington, DC, on June 21, 2016.

Philip C. Karsting,

Administrator, Foreign Agricultural Service.

[FR Doc. 2016–16048 Filed 7–6–16; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Meeting_Page?id=a2zt00000004CyPAAU.*

DATES: The meeting will be held July 18, 2016, at 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Klamath National Forest (NF) Supervisor's Office, Conference Room, 1711 South Main Street, Yreka, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Klamath NF Supervior's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Natalie Stovall, RAC Coordinator, by phone at 530–841–4411 or via email at *nstovall@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Approve prior meeting notes,
2. Update on ongoing projects,
3. Public comment period,
4. Review meeting schedule,
5. Proposal reviews,
6. Vote on proposals, and
7. Schedule meeting for August.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments may be sent to Natalie Stovall, RAC Coordinator, 1711 S. Main Street, Yreka, California 96097; by email to *nstovall@fs.fed.us* or via facsimile to 530–841–4571.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: June 27, 2016.

Patricia A. Gratham,

Forest Supervisor.

[FR Doc. 2016–16084 Filed 7–6–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce ("the Department") has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* July 7, 2016.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review ("POR"), it must notify the Department within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://access.trade.gov* in accordance with 19 CFR 351.303.[1]

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[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended ("the Act"). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments five days after the deadline for the initial comments.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be "collapsed" (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value ("Q&V") Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Respondent Selection—Aluminum Extrusions From the People's Republic of China

In the event the Department limits the number of respondents for individual examination in the administrative review of the antidumping duty order on aluminum extrusions from the People's Republic of China ("PRC"), the Department intends to select respondents based on volume data contained in responses to Q&V questionnaires. Further, the Department intends to limit the number of Q&V questionnaires issued in the review based on CBP data for U.S. imports of aluminum extrusions from the PRC. The extremely wide variety of individual types of aluminum extrusion products included in the scope of the order on aluminum extrusions would preclude meaningful results in attempting to determine the largest PRC exporters of subject merchandise by volume. Therefore, the Department will limit the number of Q&V questionnaires issued based on the import values in CBP data which will serve as a proxy for imported quantities. Parties subject to the review to which the Department does not send a Q&V questionnaire may file a response to the Q&V questionnaire by the applicable deadline if they desire to be included in the pool of companies from which the Department will select mandatory respondents. The Q&V questionnaire will be available on the Department's Web site at *http://trade.gov/enforcement/news.asp* on the date of publication of this notice in the **Federal Register**. The responses to the Q&V questionnaire must be received by the Department within 14 days of publication of this notice. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, the Department does not intend to grant any extensions for the submission of responses to the Q&V questionnaire. Parties will be given the opportunity to comment on the CBP data used by the Department to limit the number of Q&V questionnaires issued. We intend to release the CBP data under APO to all parties having an APO within seven days of publication of this notice in the **Federal Register**. The Department invites comments regarding CBP data and respondent selection within five days of placement of the CBP data on the record.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews:

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than May 31, 2017.

	Period to be reviewed
Antidumping Duty Proceedings	
CANADA: Citric Acid and Certain Citrate Salt A–122–853	5/1/15–4/30/16
Jungbunzlauer Canada Inc.	
INDIA: Certain Welded Carbon Steel Standard Pipes and Tubes A–533–502	5/1/15–4/30/16
Lloyds Metals & Engineers Limited and Lloyds Line Pipe Ltd.	
Lloyds Steel Industries Ltd.	
Jindal Pipes Limited	
Maharashtra Seamless Limited	
Ratnamani Metals Tubes Ltd.	
Tata Iron and Steel Co., Ltd.	
JAPAN: Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products A–588–869	5/1/15–4/30/16
Nippon Steel & Sumitomo Metals Corporation	
Toyo Kohan Co., Ltd.	
REPUBLIC OF KOREA: Certain Polyester Staple Fiber A–580–839	5/1/15–4/30/16
Huvis Corporation	
TAIWAN: Certain Circular Welded Carbon Steel Pipes and Tubes A–583–008	5/1/15–4/30/16
Shin Yang Steel Co., Ltd.	
Yieh Hsing Enterprise Co., Ltd.	
TAIWAN: Certain Stilbenic Optical Brightening Agents A–583–848	5/1/15–4/30/16
Teh Fong Min International Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Extrusions A–570–967	5/1/15–4/30/16
Acro Import and Export Co.	
Activa International Inc.	
Allied Maker Limited	
Alnan Aluminim Co., Ltd.	
Aluminicaste Fundicion de Mexico	
AMC Ltd.	
Atlas Integrated Manufacturing Ltd.	
Belton (Asia) Development Ltd.	
Birchwoods (Lin'an) Leisure Products Co., Ltd.	
Bolnar Hong Kong Ltd.	
Bracalente Metal Products (Suzhou) Co., Ltd.	
Changshu Changsheng Aluminium Products Co., Ltd.	

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[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.*, an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Changzhou Changzheng Evaporator Co., Ltd.	
Changzhou Tenglong Auto Parts Co., Ltd.	
China Square	
China Square Industrial Co.	
China Zhongwang Holdings, Ltd.	
Chiping One Stop Industrial & Trade Co., Ltd.	
Classic & Contemporary Inc.	
Clear Sky Inc.	
Cosco (J.M.) Aluminium Co., Ltd.	
Dalian Huacheng Aquatic Products	
Dalian Liwang Trade Co., Ltd.	
Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.	
Dongguan Aoda Aluminum Co., Ltd.	
Dongguan Dazhan Metal Co., Ltd.	
Dongguan Golden Tiger Hardware Industrial Co., Ltd.	
Dragonluxe Limited	
Dynabright Int'l Group (HK) Limited	
Dynamic Technologies China Ltd.	
Ever Extend Ent. Ltd.	
Fenghua Metal Product Factory	
First Union Property Limited	
FookShing Metal & Plastic Co. Ltd.	
Foreign Trade Co. of Suzhou New & High-Tech Industrial Development Zone	
Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.	
Foshan Golden Source Aluminum Products Co., Ltd.	
Foshan Guangcheng Aluminium Co., Ltd	
Foshan Jinlan Aluminum Co. Ltd.	
Foshan JMA Aluminum Company Limited	
Foshan Sanshui Fenglu Aluminium Co., Ltd.	
Foshan Shunde Aoneng Electrical Appliances Co., Ltd	
Foshan Yong Li Jian Aluminum Co., Ltd.	
Fujian Sanchuan Aluminum Co., Ltd.	
Fuzhou Sunmodo New Energy Equipment	
Genimex Shanghai, Ltd.	
Global PMX Dongguan Co., Ltd.	
Global Point Technology (Far East) Limited	
Gold Mountain International Development Limited	
Golden Dragon Precise Copper Tube Group, Inc.	
Gran Cabrio Capital Pte. Ltd.	
Gree Electric Appliances	
GT88 Capital Pte. Ltd.	
Guang Ya Aluminium Industries (Hong Kong) Ltd.	
Guang Ya Aluminium Industries Co., Ltd.	
Guangdong Hao Mei Aluminium Co., Ltd.	
Guangdong Jianmei Aluminum Profile Company Limited	
Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.	
Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.	
Guangdong Weiye Aluminum Factory Co., Ltd.	
Guangdong Whirlpool Electrical Appliances Co., Ltd.	
Guangdong Xingfa Aluminium Co., Ltd.	
Guangdong Xin Wei Aluminum Products Co., Ltd.	
Guangdong Yonglijian Aluminum Co., Ltd.	
Guangdong Zhongya Aluminum Company Limited	
Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.	
Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.	
Hangzhou Xingyi Metal Products Co., Ltd.	
Hanwood Enterprises Limited	
Hanyung Alcoba Co., Ltd.	
Hanyung Alcobis Co., Ltd.	
Hanyung Metal (Suzhou) Co., Ltd.	
Hao Mei Aluminum Co., Ltd.	
Hao Mei Aluminum International Co., Ltd.	
Hebei Xusen Wire Mesh Products Co., Ltd.	
Henan New Kelong Electrical Appliances Co., Ltd.	
Hong Kong Gree Electric Appliances Sales Limited	
Hong Kong Modern Non-Ferrous Metal	
Honsense Development Company	
Hui Mei Gao Aluminum Foshan Co., Ltd.	
IDEX Dinglee Technology (Tianjin) Co., Ltd.	
IDEX Technology Suzhou Co., Ltd.	
IDEX Health	
Innovative Aluminium (Hong Kong) Limited	
iSource Asia	
Jackson Travel Products Co., Ltd.	

	Period to be reviewed
Jangho Curtain Wall Hong Kong Ltd.	
Jiangmen Jianghai District Foreign Economic Enterprise Corp. Ltd.	
Jiangmen Jianghai Foreign Ent. Gen.	
Jiangmen Qunxing Hardware Diecasting Co., Ltd.	
Jiangsu Changfa Refrigeration Co., Ltd.	
Jiangyin Suncitygaylin	
Jiangyin Trust International Inc.	
Jiangyin Xinhong Doors and Windows Co., Ltd.	
Jiaxing Jackson Travel Products Co., Ltd.	
Jiaxing Taixin Metal Products Co., Ltd.	
Jiuyan Co., Ltd.	
JMA (HK) Company Limited	
Justhere Co., Ltd.	
Kam Kiu Aluminium Products Sdn. Bhd.	
Kanal Precision Aluminum Product Co., Ltd	
Karlton Aluminum Company Ltd.	
Kong Ah International Company Limited	
Kromet International, Inc.	
Kunshan Giant Light Metal Technology Co., Ltd.	
Liaoning Zhongwang Group Co., Ltd.	
Liaoyang Zhongwang Aluminum Profile Co. Ltd.	
Longkou Donghai Trade Co., Ltd.	
Metaltek Group Co., Ltd.	
Metaltek Metal Industry Co., Ltd.	
Midea Air Conditioning Equipment Co., Ltd.	
Midea International Trading Co., Ltd.	
Midea International Training Co., Ltd.	
Miland Luck Limited	
Nanhai Textiles Import & Export Co., Ltd.	
New Asia Aluminum & Stainless Steel Product Co., Ltd.	
New Zhongya Aluminum Factory	
Nidec Sankyo (Zhejang) Corporation	
Nidec Sankyo Singapore Pte. Ltd.	
Ningbo Coaster International Co., Ltd.	
Ningbo Hi Tech Reliable Manufacturing Company	
Ningbo Ivy Daily Commodity Co., Ltd.	
Ningbo Yili Import and Export Co., Ltd.	
North China Aluminum Co., Ltd.	
North Fenghua Aluminum Ltd.	
Northern States Metals	
PanAsia Aluminium (China) Limited	
Pengcheng Aluminum Enterprise Inc.	
Permasteelisa Hong Kong Limited	
Permasteelisa South China Factory	
Pingguo Aluminum Company Limited	
Pingguo Asia Aluminum Co., Ltd.	
Popular Plastics Co., Ltd.	
Press Metal International Ltd.	
Samuel, Son & Co., Ltd.	
Sanchuan Aluminum Co., Ltd.	
Shangdong Huasheng Pesticide Machinery Co.	
Shangdong Nanshan Aluminum Co., Ltd.	
Shanghai Automobile Air Conditioner Accessories Ltd.	
Shanghai Canghai Aluminum Tube Packaging Co., Ltd	
Shanghai Dongsheng Metal	
Shanghai Shen Hang Imp & Exp Co., Ltd.	
Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd.	
Shenyang Yuanda Aluminium Industry Engineering Co. Ltd.	
Shenzhen Hudson Technology Development Co.	
Shenzhen Jiuyuan Co., Ltd.	
Sihui Shi Guo Yao Aluminum Co., Ltd.	
Sincere Profit Limited	
Skyline Exhibit Systems (Shanghai) Co., Ltd.	
Southwest Aluminum (Group) Co., Ltd.	
Suzhou JRP Import & Export Co., Ltd.	
Suzhou New Hongji Precision Part Co.	
Tai-Ao Aluminium (Taishan) Co., Ltd.	
Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.	
Taizhou Lifeng Manufacturing Co., Ltd.	
Taizhou Lifeng Manufacturing Corporation, Ltd.	
Taizhou United Imp. & Exp. Co., Ltd.	
tenKsolar (Shanghai) Co., Ltd.	
Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.	
Tianjin Jinmao Import & Export Corp., Ltd.	

	Period to be reviewed
Tianjin Ruixin Electric Heat Transmission Technology, Ltd.	
Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.	
Tiazhou Lifeng Manufacturing Corporation	
Top-Wok Metal Co., Ltd.	
Traffic Brick Network, LLC	
Union Aluminum (SIP) Co.	
Union Industry (Asia) Co., Ltd.	
USA Worldwide Door Components (PINGHU) Co., Ltd.	
Wenzhou Shengbo Decoration & Hardware	
Whirlpool (Guangdong)	
Whirlpool Canada L.P.	
Whirlpool Microwave Products Development Ltd.	
WTI Building Products, Ltd.	
Xin Wei Aluminum Co.	
Xin Wei Aluminum Company Limited	
Xinya Aluminum & Stainless Steel Product Co., Ltd.	
Yuyao Fanshun Import & Export Co., Ltd.	
Yuyao Haoshen Import & Export	
Zahoqing China Square Industry Limited	
Zhaoqing Asia Aluminum Factory Company Ltd.	
Zhaoqing China Square Industrial Ltd.	
Zhaoqing China Square Industry Limited	
Zhaoqing New Zhongya Aluminum Co., Ltd.	
Zhejiang Anji Xinxiang Aluminum Co., Ltd.	
Zhejiang Yongkang Listar Aluminium Industry Co., Ltd.	
Zhejiang Zhengte Group Co., Ltd.	
Zhenjiang Xinlong Group Co., Ltd.	
Zhongshan Daya Hardware Co., Ltd.	
Zhongshan Gold Mountain Aluminium Factory Ltd.	
Zhongya Shaped Aluminium (HK) Holding Limited	
Zhuhai Runxingtai Electrical Equipment Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Threaded Rod [4] A–570–932	4/1/15–3/31/16
THE PEOPLE'S REPUBLIC OF CHINA: Citric Acid and Certain Citrate Salt A–570–937	5/1/15–4/30/16
Anhui BBCA International Co., Ltd.	
BCH Chemical International Limited	
China Chem Source (HK) Co., Ltd.	
COFCO Biochemical AnHui Co., Ltd.	
Jiangsu Guoxin Union Energy Co., Ltd.	
Kaifeng Chemical Co., Ltd.	
Laiwu Taihe Biochemistry Co., Ltd.	
Niran (Thailand) Co., Ltd.	
Niran Biochemical Limited	
Qingdao Chongzhi International	
Qingdao Samin Chemical Co., Ltd.	
RZBC (Juxian) Co., Ltd.	
RZBC Imp. & Exp. Co., Ltd.	
RZBC Co., Ltd.	
Shanghai Fenhe International Co., Ltd.	
Sunshine Biotech International Co., Ltd.	
Tianjin Kaifeng Chemical Co., Ltd.	
TTCA Co., Ltd.	
Weifang Ensign Industry Co., Ltd.	
Yixing-Union Biochemical Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Pure Magnesium A–570–832	5/1/15–4/30/16
Tianjin Magnesium International Co., Ltd. ("TMI")	
Tianjin Magnesium Metal Co., Ltd. ("TMM")	
TURKEY: Circular Welded Carbon Steel Pipes and Tubes A–489–501	5/1/15–4/30/16
Borusan Mannesmann Boru Sanayi ve Ticaret A.S.	
Borusan Birlesik Boru Fabrikalari San ve Tic.	
Borusan Istikbal Ticaret T.A.S.	
Borusan Gemlik Boru Tesisleri A.S.	
Borusan Iharcat Ithalat ve Dagitim A.S.	
Borusan Ithicat ve Dagitim A.S.	
Tubeco Pipe and Steel Corporation	
Erbosan Erciyas Boru Sanayi ve Ticaret A.S.	
Toscelik Profil ve Sac Endustrisi A.S.	
Toscelik Metal Ticaret A.S.	
Tosyali Dis Ticaret A.S.	
Yucel Boru ve Profil Endustrisi A.S.	
Yucelboru Ihracat Ithalat ve Pazarlama A.S.	
Caryirova Boru Sanayi ve Ticaret A.S.	
TURKEY: Light-Walled Rectangular Pipe and Tube A–489–815	5/1/15–4/30/16
Toscelik Profil ve Sac Endustrisi A.S.	
Toscelik Metal Ticaret A.S.	

	Period to be reviewed
Tosyali Dis Ticaret A.S.	
Noksel Celik Boru Sanayi A.S.	
Yucel Boru ve Profil Endustrisi A.S.	
Yucelboru Ihracat Ithalat ve Pazarlama A.S.	
Cayirova Boru Sanayi ve Ticaret A.S.	
Cinar Boru Profil Sanayi ve Ticaret A.S.	
Agir Haddecilik A.S.	
UNITED ARAB EMIRATES: Certain Steel Nails A–520–804	5/1/15–4/30/16
ABF Freight International Private LTD [5]	
Consolidated Shipping Services LLC	
International Maritime & Aviation	
International Maritime & Aviation LLC	
Ivk Manuport Logistics LLC	
Kuehne + Nagel LLC [6]	
Oman Fasteners LLC	
Overseas Distrubution Services Inc.	
Overseas International Steel Ind. LLC	
Overseas International Steel Industry LLC	
Countervailing Duty Proceedings	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Extrusions C–570–968	1/1/15–12/31/15
Acro Import and Export Co.	
Activa International Inc.	
Allied Maker Limited	
Alnan Aluminum Co., Ltd.	
Aluminicaste Fundicion de Mexico	
AMC Ltd.	
Atlas Integrated Manufacturing Ltd.	
Belton (Asia) Development Ltd.	
Birchwoods (Lin'an) Leisure Products Co., Ltd.	
Bolnar Hong Kong Ltd.	
Bracalente Metal Products (Suzhou) Co., Ltd.	
Changshu Changshen Aluminum Products Co., Ltd.	
Changzhou Changzhen Evaporator Co., Ltd.	
Changzhou Tenglong Auto Parts Co., Ltd.	
China Square	
China Square Industrial Co.	
China Zhongwang Holdings, Ltd.	
Chiping One Stop Industrial & Trade Co., Ltd.	
Classic & Contemporary Inc.	
Clear Sky Inc.	
Cosco (J.M.) Aluminum Co., Ltd.	
Dalian Huacheng Aquatic Products	
Dalian Liwang Trade Co., Ltd.	
Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.	
Daya Hardware Co., LTD	
Dongguan Dazhan Metal Co., Ltd.	
Dongguan Golden Tiger Hardware Industrial Co., Ltd.	
Dongguang Aoda Aluminum Co., Ltd.	
Dragonluxe Limited	
Dynabright International Group (HK) Ltd.	
Dynamic Technologies China	
ETLA Technology (Wuxi) Co., Ltd.	
Ever Extend Ent. Ltd.	
Fenghua Metal Product Factory	
First Union Property Limited	
FookShing Metal & Plastic Co. Ltd.	
Foreign Trade Co. of Suzhou New & High-Tech Industrial Development Zone	
Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.	
Foshan Golden Source Aluminum Products Co., Ltd.	
Foshan Guangcheng Aluminium Co., Ltd	
Foshan Jinlan Aluminum Co. Ltd.	
Foshan JMA Aluminum Company Limited	
Foshan Shanshui Fenglu Aluminum Co., Ltd.	
Foshan Shunde Aoneng Electrical Appliances Co., Ltd	
Foshan Yong Li Jian Aluminum Co., Ltd.	
Fujian Sanchuan Aluminum Co., Ltd.	
Fuzhou Sunmodo New Energy Equipment	
Genimex Shanghai, Ltd.	
Global Hi-Tek Precision Limited	
Global PMX Dongguan Co., Ltd.	
Global Point Technology (Far East) Limited	
Gold Mountain International Development, Ltd.	
Golden Dragon Precise Copper Tube Group, Inc.	

	Period to be reviewed
Gran Cabrio Capital Pte. Ltd.	
Gree Electric Appliances	
GT88 Capital Pte. Ltd.	
Guang Ya Aluminium Industries (HK) Ltd.	
Guang Ya Aluminium Industries Co., Ltd.	
Guangdong Hao Mei Aluminium Co., Ltd.	
Guangdong Jianmei Aluminum Profile Company Limited	
Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.	
Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.	
Guangdong Weiye Aluminum Factory Co., Ltd.	
Guangdong Whirlpool Electrical Appliances Co., Ltd.	
Guangdong Xingfa Aluminum Co., Ltd.	
Guangdong Xin Wei Aluminum Products Co., Ltd.	
Guangdong Yonglijian Aluminum Co., Ltd.	
Guangdong Zhongya Aluminum Company Limited	
Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.	
Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.	
Hangzhou Xingyi Metal Products Co., Ltd.	
Hanwood Enterprises Limited	
Hanyung Alcoba Co., Ltd.	
Hanyung Alcobis Co., Ltd.	
Hanyung Metal (Suzhou) Co., Ltd.	
Hao Mei Aluminum Co., Ltd.	
Hao Mei Aluminum International Co., Ltd.	
Hebei Xusen Wire Mesh Products Co., Ltd.	
Henan New Kelong Electrical Appliances Co., Ltd.	
Hong Kong Gree Electric Appliances Sales Limited	
Hong Kong Modern Non-Ferrous Metal	
Honsense Development Company	
Hui Mei Gao Aluminum Foshan Co., Ltd.	
IDEX Dinglee Technology (Tianjin) Co., Ltd.	
IDEX Technology Suzhou Co., Ltd.	
IDEX Health	
Innovative Aluminum (Hong Kong) Limited	
iSource Asia	
Jackson Travel Products Co., Ltd.	
Jangho Curtain Wall Hong Kong Ltd.	
Jiangmen Jianghai District Foreign Economic Enterprise Corp. Ltd.	
Jiangmen Jianghai Foreign Ent. Gen.	
Jiangmen Qunxing Hardware Diecasting Co., Ltd.	
Jiangsu Changfa Refrigeration Co.	
Jiangsu Zhenhexiang New Material Technology Co., Ltd.	
Jiangyin Suncitygaylin	
Jiangyin Trust International Inc.	
Jiangyin Xinhong Doors and Windows Co., Ltd.	
Jiaxing Jackson Travel Products Co., Ltd.	
Jiaxing Taixin Metal Products Co., Ltd.	
Jiuyan Co., Ltd.	
JMA (HK) Company Limited	
Johnson Precision Engineering (Suzhou) Co Ltd	
Justhere Co., Ltd.	
Kam Kiu Aluminium Products Sdn. Bhd.	
Kanal Precision Aluminum Product Co., Ltd	
Karlton Aluminum Company Ltd.	
Kong Ah International Company Limited	
Kromet International Inc.	
Kunshan Giant Light Metal Technology Co., Ltd.	
Liaoning Zhongwang Group Co., Ltd.	
Liaoyang Zhongwang Aluminum Profile Co. Ltd.	
Longkou Donghai Trade Co., Ltd.	
Metaltek Group Co., Ltd.	
Metaltek Metal Industry Co., Ltd.	
Midea Air Conditioning Equipment Co., Ltd.	
Midea International Trading Co., Ltd.	
Midea International Training Co., Ltd.	
Miland Luck Limited	
Nanhai Textiles Import & Export Co., Ltd.	
New Asia Aluminum & Stainless Steel Product Co., Ltd.	
New Zhongya Aluminum Factory	
Nidec Sankyo (Zhejang) Corporation	
Nidec Sankyo Singapore Pte. Ltd.	
Ningbo Coaster International Co., Ltd.	
Ningbo Haina Machine Co., Ltd.	
Ningbo Hi Tech Reliable Manufacturing Company	

	Period to be reviewed
Ningbo Innopower Tengda Machinery Co., Ltd.	
Ningbo Ivy Daily Commodity Co., Ltd.	
Ningbo Yili Import and Export Co., Ltd.	
Ningbo Yinzhou Sanhua Electric Machine Factory	
North China Aluminum Co., Ltd.	
North Fenghua Aluminum Ltd.	
Northern States Metals	
PanAsia Aluminum (China) Limited	
Pengcheng Aluminum Enterprise Inc.	
Permasteelisa Hong Kong Ltd.	
Permasteelisa South China Factory	
Pingguo Aluminum Company Limited	
Pingguo Asia Aluminum Co., Ltd.	
Popular Plastics Company Ltd.	
Precision Metal Works LTD.	
Press Metal International Ltd.	
Samuel, Son & Co., Ltd.	
Sanchuan Aluminum Co., Ltd.	
Shangdong Huasheng Pesticide Machinery Co.	
Shangdong Nanshan Aluminum Co., Ltd.	
Shanghai Automobile Air Conditioner Accessories Ltd.	
Shanghai Canghai Aluminum Tube Packaging Co., Ltd	
Shanghai Dongsheng Metal	
Shanghai Shen Hang Imp & Exp Co., Ltd.	
Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd.	
Shenyang Yuanda Aluminum Industry Engineering Co. Ltd.	
Shenzhen Hudson Technology Development Co.	
Shenzhen Jiuyuan Co., Ltd.	
Sihui Shi Guo Yao Aluminum Co., Ltd.	
Sincere Profit Limited	
Skyline Exhibit Systems (Shanghai) Co. Ltd.	
Southwest Aluminum (Group) Co., Ltd.	
Summit Heat Sinks Metal Co., Ltd.	
Suzhou JRP Import & Export Co., Ltd.	
Suzhou New Hongji Precision Part Co.	
Suzhou New Hongji Precision Parts Co Ltd	
Tai-Ao Aluminum (Taishan) Co. Ltd.	
Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.	
Taizhou Lifeng Manufacturing Co., Ltd.	
Taizhou Lifeng Manufacturing Corporation, Ltd.	
Taizhou United Imp. & Exp. Co., Ltd.	
tenKsolar (Shanghai) Co., Ltd.	
Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.	
Tianjin Jinmao Import & Export Corp., Ltd.	
Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd.	
Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.	
Tiazhou Lifeng Manufacturing Corporation	
Top-Wok Metal Co., Ltd.	
Traffic Brick Network, LLC	
Union Aluminum (SIP) Co.	
Union Industry (Asia) Co., Ltd.	
USA Worldwide Door Components (Pinghu) Co., Ltd.	
Wenzhou Shengbo Decoration & Hardware	
Whirlpool (Guangdong)	
Whirlpool Canada L.P.	
Whirlpool Microwave Products Development Ltd.	
WTI Building Products, Ltd.	
Wuxi Huida Aluminum Co., Ltd.	
Xin Wei Aluminum Co.	
Xin Wei Aluminum Company Limited	
Xinya Aluminum & Stainless Steel Product Co., Ltd.	
Yuyao Fanshun Import & Export Co., Ltd.	
Yuyao Haoshen Import & Export	
Zahoqing China Square Industry Limited	
Zhaoqing Asia Aluminum Factory Company Ltd.	
Zhaoqing China Square Industrial Ltd.	
Zhaoqing China Square Industry Limited	
Zhaoqing New Zhongya Aluminum Co., Ltd.	
Zhejiang Anji Xinxiang Aluminum Co., Ltd.	
Zhejiang Yongkang Listar Aluminum Industry Co., Ltd.	
Zhejiang Zhengte Group Co., Ltd.	
Zhenjiang Xinlong Group Co., Ltd.	
Zhongshan Daya Hardware Co., Ltd.	
Zhongshan Gold Mountain Aluminum Factory Ltd.	

	Period to be reviewed
Zhongya Shaped Aluminum (HK) Holding Limited	
Zhuhai Runxingtai Electrical Equipment Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Citric Acid and Certain Citrate Salts C–570–938	1/1/15–12/31/15
Anhui BBCA International Co., Ltd.	
BCH Chemical International Limited	
China Chem Source (HK) Co., Ltd.	
COFCO Biochemical AnHui Co., Ltd.	
Jiangsu Guoxin Union Energy Co., Ltd.	
Kaifeng Chemical Co., Ltd.	
Laiwu Taihe Biochemistry Co., Ltd.	
Niran (Thailand) Co., Ltd.	
Niran Biochemical Limited	
Qingdao Chongzhi International	
Qingdao Samin Chemical Co., Ltd.	
RZBC (Juxian) Co., Ltd.	
RZBC Co., Imp. & Exp. Co., Ltd.	
RZBC Co., Ltd.	
Shanghai Fenhe International Co., Ltd.	
Sunshine Biotech International Co., Ltd.	
Tianjin Kaifeng Chemical Co., Ltd.	
TTCA Co., Ltd.	
Weifang Ensign Industry Co., Ltd.	
Yixing-Union Biochemical Co., Ltd.	

Suspension Agreements

None.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness

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[4] In the initiation notice that published on June 6, 2016 (81 FR 36268) the POR for the above referenced case was incorrect. The period listed above is the correct POR for this case. The companies under review are those identified in the June 6, 2016 **Federal Register** Notice.

[5] The request for review covers ABF Freight International Private LTD located in India and the United Arab Emirates.

[6] The request for review covers Kuehne + Nagel LLC located in the Sultanate of Oman and the United Arab Emirates.

of that information.[7] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[8] The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Final Rule,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: June 29, 2016.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–16145 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–DS–P

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[7] *See* section 782(b) of the Act.

[8] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) ("*Final Rule*"); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–602, A–588–602, A–583–605, A–549–807, A–570–814]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, Japan, Taiwan, Thailand, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: As a result of these sunset reviews, the Department of Commerce (the Department) finds that revocation of the antidumping duty orders on carbon butt-weld pipe fittings (BWPF) from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China (PRC) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Sunset Reviews" section of this notice.

DATES: *Effective Date:* July 7, 2016.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2312.

Background

On March 1, 2016, the Department published the notice of initiation of the third sunset reviews of the antidumping duty orders on BWPF from Brazil, Japan, Taiwan, Thailand, and the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] On March 7, 2015, the Department received a Notice of Intent to Participate in these reviews from Tube Forgings of America, Inc. (TFA), Mills Iron Works, Inc. (MIW), and Hackney Ladish, Inc. (a subsidiary of Precision Castparts Corp.) (HL), domestic interested parties, within the deadline specified in 19 CFR 351.218(d)(1)(i). On March 9, 2015, the Department also received a Notice of Intent to Participate in these reviews from Weldbend Corporation (Weldbend), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i). TFA, MIW, HL, and Weldbend all claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic like product in the United States.

On March 31, 2016, we received complete substantive responses for each review from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews, nor was a hearing requested. On May 9, 2016, pursuant to 19 CFR 351.309(e), TFA, MIW, and HL filed comments on the adequacy of responses in these sunset reviews. Pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of these orders.

Scope of the Orders

The merchandise covered by the orders consists of certain carbon steel butt-weld type fittings, other than couplings, under 14 inches in diameter, whether finished or unfinished. These imports are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.[2]

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[1] *See Initiation of Five-Year ("Sunset") Reviews,* 81 FR 10578 (March 1, 2016).

[2] A full description of the scope of the orders is contained in the memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on

Analysis of Comments Received

All issues raised in these reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of the margins likely to prevail if the orders were revoked, are addressed in the accompanying Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1), (2) and (3) of the Act, we determine that revocation of the antidumping duty orders on BWPF from Brazil, Japan, Taiwan, Thailand, and the PRC would be likely to lead to continuation or recurrence of dumping up to the following weighted-average margin percentages:

Country	Weighted-average margin (percent)
Brazil	52.25
Japan	65.81
Taiwan	87.30
Thailand	52.60
The PRC	182.90

Notification to Interested Parties

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: June 28, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Orders
IV. History of the Orders
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely To Prevail
VII. Final Results of Sunset Reviews
VIII. Recommendation

[FR Doc. 2016–16059 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The meeting is scheduled for Tuesday, July 26, 2016, at 9:30 a.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be held in the Global Room at the National Association of Manufacturers (NAM), 733 10th Street NW., Suite 700, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Hinman, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230 (*Phone:* 202–482–0627; *Fax:* 202–482–5665; *email: maureen.hinman@trade.gov.*) This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at (202) 482–5225 no less than one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The meeting will take place from 9:30 a.m. to 2:00 p.m. EDT. The general meeting is open to the public and time will be permitted for public comment from 1:30–2:00 p.m. EDT. Those interested in attending must provide notification by Wednesday, July 13, 2016 at 5:00 p.m. EDT, via the contact information provided above. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: The agenda for this meeting will include a joint ETTAC–ETWG discussion wherein executives of the U.S. interagency Trade Promotion Coordinating Committee's (TPCC) Environmental Trade Working Group (ETWG) will receive and provide feedback on the ETTAC's recommendations to the Secretary of Commerce and the ETWG.

Background: The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994.

Dated: June 30, 2016.

Man Cho,

Deputy Office Director, Office of Energy and Environmental Industries.

[FR Doc. 2016–16087 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Cyber Security Trade Mission to Turkey

ACTION: Supplemental notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, is amending the Notice published at 80 FR 76670 (December 10, 2015), regarding the Information and Communication Technology Trade Mission to Turkey, scheduled for November 28–December 1, 2016, to amend the title, dates, and deadline for submitting applications for the event.

Carbon Steel Butt-Weld Pipe Fittings from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China" (Issues and Decision Memorandum), dated concurrently with these results and hereby adopted by this notice. The scope language varies slightly amongst the countries due to the fact the investigations and subsequent orders for the PRC and Thailand occurred after the investigations for the other three countries. Additionally, the scope language for Taiwan includes a reference to a scope decision.

SUPPLEMENTARY INFORMATION: Amendments to Revise the Event Title and Dates.

Background

Due to the U.S. holidays around the original dates of the mission, it has been determined that to allow for optimal execution of recruitment and event scheduling for the mission, the title of the mission was amended from "Information and Communication Technology Trade Mission" to "Cyber Security Trade Mission," and the dates of the mission modified from November 28–December 1, 2016, to December 5–8, 2016. As a result of the shift of the event dates the date of the application deadline is revised from September 6, 2016 to the new deadline of September 16, 2016. Applications will now be accepted through September 16, 2016 (and after that date if space remains and scheduling constraints permit). Interested U.S. companies and trade associations/organizations providing cyber security products and services which have not already submitted an application are encouraged to do so.

The proposed schedule is updated as follows:

Sunday Dec. 4	• Trade Mission Participants Arrive in Istanbul. • Visit the city (Optional). • Mission Welcome Meet-up.
Monday Dec. 5	• Welcome to Istanbul and Country Briefing (Turkey). • One-on-One business matchmaking appointments. • Networking Lunch. • One-on-One business matchmaking appointments. • Networking Reception (TBC).
Tuesday Dec. 6	• One-on-One business matchmaking appointments. • Networking Lunch. • Travel to Ankara.
Wednesday Dec. 7	• Welcome to Ankara. • One-on-One business matchmaking appointments. • Networking Lunch. • One-on-One business matchmaking appointments. • Networking Reception.
Thursday Dec. 8	• Ministry Meetings. • Networking Lunch. • More meetings. • Trade Mission Ends.

The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the Notice published at 80 FR 76670 (December 10, 2015). The applicants selected will be notified as soon as possible.

Contact Information

Gemal Brangman, Team Leader, Trade Promotion Programs, U.S. Department of Commerce, Washington, DC 20230, Tel: 202–482–3773, Fax: 202–482–9000, *Gemal.Brangman@trade.gov.*

Gemal J. Brangman,

Trade Promotion Programs Team Leader.

[FR Doc. 2016–15842 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") published the *Preliminary Results* of the new shipper review of the antidumping duty order on certain frozen fish fillets ("fish fillets") from the Socialist Republic of Vietnam ("Vietnam") on January 21, 2016.[1] The period of review ("POR") is August 1, 2014, through January 1, 2015. We provided interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results. The final dumping margin is listed below in the "Final Results of the New Shipper Review" section of this notice.

DATES: Effective Date: July 7, 2016.

FOR FURTHER INFORMATION CONTACT: Paul Walker or Kenneth Hawkins, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–0413 or 202–482–6491, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Results* on January 21, 2016.[2] On April 4, 2016, the Department extended the deadline for the final results to June 27, 2016.[3] The Department conducted a verification of Hai Huong Seafood Joint Stock Company ("HHFISH") between April 11, 2016, and April 13, 2016.[4] Between June 2, 2016 and June 8, 2016, Petitioners submitted their case brief and HHFISH submitted a rebuttal brief.

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[1] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty New Shipper Review; 2014–2015,* 81 FR 5709 (January 21, 2016) ("*Preliminary Results*"), and accompanying Preliminary Decision Memorandum.

[2] *See Preliminary Results; see also* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016, extending all administrative deadlines by four business days.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations from Kenneth Hawkins, International Trade Analyst, Office V, Antidumping and Countervailing Duty Operations, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of 2014–2015 New Shipper Review, dated April 4, 2016.

[4] *See* Memorandum to the File, from Matthew Renkey and Kenneth Hawkins, Case Analysts, "Verification of the Sales and Factors of Production Responses of Hai Huong Seafood Joint Stock Company in the 2014–2015 New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam," dated May 24, 2016.

Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus.* These products are classifiable under tariff article code 0304.62.0020 (Frozen Fish Fillets of the species *Pangasius,* including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States ("HTSUS").[5] Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Room B8024 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and in the CRU. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, we revised the margin calculations for HHFISH.[7]

Final Results of the Review

The dumping margin for the final results of this new shipper review is as follows:

Exporter/producer	Weighted-average margin (dollars/kilogram)[8]
Hai Huong Seafood Joint Stock Company	1.25

Disclosure

The Department will disclose calculations performed for these final results to the parties within five days of the date of publication of this notice, in accordance with section 351.224(b) of the Department's regulations.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this new shipper review.

For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. We will continue to direct CBP to assess importer specific assessment rates based on the resulting per-unit (*i.e.,* per kg) rates by the weight in kgs of each entry of the subject merchandise during the POR. Specifically, we calculated importer specific duty assessment rates on a per-unit rate basis by dividing the total dumping margins (calculated as the difference between normal value and export price, or constructed export price) for each importer by the total sales quantity of subject merchandise sold to that importer during the POR. If an importer (or customer)-specific assessment rate is de minimis (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by HHFISH, the cash deposit rate will be the rate established in the final results of this new shipper review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for the specific producer-exporter combination listed above); (2) for subject merchandise exported by HHFISH, but not manufactured by HHFISH, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.,* $2.35/Kilogram); and (3) for subject merchandise manufactured by HHFISH, but exported by any other party, the cash deposit rate will be the Vietnam-wide rate (*i.e.,* $2.35/Kilogram). The cash deposit requirement, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their

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[5] Until June 30, 2004 these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004 until December 31, 2006 these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007 until December 31, 2011 these products were classifiable under HTSUS 0304.29.6033. On March 2, 2011 the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection ("CBP") that the subject merchandise may enter under: 1604.19.2000 and 1604 19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012 the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

[6] For a complete description of the scope of the order, *see* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of Antidumping Duty New Shipper Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, at 2–3 ("Issues and Decision Memorandum"), dated concurrently with and hereby adopted by this notice.

[7] *See* Issues and Decision Memorandum.

[8] In the third administrative review of this order, the Department determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479 (March 24, 2008).

responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this new shipper review and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.214.

Dated: June 27, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Decision Memorandum

- Summary
- Case Issues
- Background
- Scope of the Order
- Discussion of the Issues
  - Comment I Application of Facts Available to HHFISH's Reported Factors of Production
  - Comment II By-products Sold During the POR
  - Comment III Corrections to the SAS Program
- Recommendation

[FR Doc. 2016–16060 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip From Germany: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 11, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty (AD) order on brass sheet and strip from Germany.[1] The review covers ten producers or exporters of subject merchandise.[2] We received no comments or requests for a hearing. Therefore, for the final results, we continue to find that three of the producers or exporters for which the Department initiated a review, Schwermetall, ThyssenKrupp, and Wieland, had no shipments during the POR. Further, we find that subject merchandise has been sold at less than normal value by seven of the companies subject to this review.[3]

DATES: *Effective Date:* July 7, 2016.

FOR FURTHER INFORMATION CONTACT: George McMahon or Eric Greynolds, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1167 or (202) 482–6071, respectively.

Background

On April 11, 2016, the Department published the *Preliminary Results.* The period of review (POR) is March 1, 2014, through February 28, 2015. We invited interested parties to comment on the *Preliminary Results.* We received no comments from any party. The Department conducted this administrative review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of the order covers shipments of brass sheet and strip, other than leaded and tinned, from Germany. The chemical composition of the covered products is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C2000; this review does not cover products the chemical compositions of which are defined by other CDA or UNS series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7409.21.00.50, 7409.21.00.75, 7409.21.00.90, 7409.29.00.50, 7409.29.00.75, and 7409.29.0090. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of this order remains dispositive.

Final Determination of No Shipments

As noted above, the Department received no comments concerning the *Preliminary Results* of this segment of the proceeding. As there are no changes from, or comments on, the *Preliminary Results,* the Department continues to find that Schwermetall, ThyssenKrupp, and Wieland had no shipments of the subject merchandise, and, therefore, no reviewable transactions, during the POR. Further, we find that subject merchandise has been sold at less than normal value by Aurubis, Schreiber, KME, Messingwerk, MKM, Schlenk, and Sundwiger. Accordingly, the preliminary issues and decision memorandum is adopted in toto as the final decision memorandum and no new decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this proceeding, see the *Preliminary Results* and the accompanying Preliminary Decision Memorandum.[4]

Final Results of Review

As a result of this review, the Department determines that the following dumping margins on brass sheet and strip from Germany exist for the period March 1, 2014, through February 28, 2015:

Producer and/or exporter	Margin (percent)
Aurubis Stolberg GmbH & Co. KG	22.61
Carl Schreiber GmbH	22.61
KME Germany AG & Co. KG	22.61
Messingwerk Plettenberg Herfeld GmbH & Co. KG	55.60
MKM Mansfelder Kupfer & Messing GmbH	22.61
Schlenk Metallfolien GmbH & Co. KG	22.61

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[1] *See Brass Sheet and Strip from Germany: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015,* 81 FR 21312 (April 11, 2016) (*Preliminary Results*).

[2] The ten producers or exporters include: Aurubis Stolberg GmbH & Co. KG (Aurubis), Carl Schreiber GmbH (Schreiber), KME Germany AG & Co. KG (KME), Messingwerk Plettenberg Herfeld GmbH & Co. KG (Messingwerk), MKM Mansfelder Kupfer & Messing GmbH (MKM), Schlenk Metallfolien GmbH & Co. KG (Schlenk), Schwermetall Halbzeugwerk GmbH & Co. KG (Schwermetall), Sundwiger Messingwerke GmbH & Co. KG (Sundwiger), ThyssenKrupp VDM GmbH (ThyssenKrupp), and Wieland-Werke AG (Wieland).

[3] The seven companies are Aurubis, Schreiber, KME, Messingwerk, MKM, Schlenk, and Sundwiger.

[4] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, titled "Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany; 2014–2015," dated April 4, 2016 (Preliminary Decision Memorandum). The Preliminary Decision Memorandum can be accessed directly at: *http://enforcement.trade.gov/frn/index.html.*

Producer and/or exporter	Margin (percent)
Sundwiger Messingwerke GmbH & Co. KG	22.61

Assessment Rates

Upon issuance of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212. The Department intends to issue assessment instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.30 percent, the all-others rate determined in the less than fair value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: June 28, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–16137 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838, A–533–840, A–570–893, A–549–822]

Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China and Thailand: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

SUMMARY: As a result of these sunset reviews, the Department of Commerce (the Department) finds that revocation of the antidumping duty (AD) orders would be likely to lead to continuation or recurrence of dumping at the dumping margins identified in the "Final Results of Reviews" section of this notice.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, AD/CVD Operations, Office II, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4929.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2016, the Department published the notice of initiation of the sunset reviews of the AD *Orders*[1] on certain frozen warmwater shrimp from Brazil, India, the People's Republic of China (PRC), and Thailand, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On March 8, 2016, and March 16, 2016, respectively, the Ad Hoc Shrimp Trade Action Committee (AHSTAC (petitioner in the underlying investigation)) and the American Shrimp Processors Association (ASPA) notified the Department of their intent to participate within the 15-day period specified in 19 CFR 351.218(d)(1)(i).[3] AHSTAC claimed interested party status under section 771(9)(C) of the Act stating that its individual members are each producers in the United States of a domestic like product. ASPA claimed interested party status under section 771(9)(E) of the Act stating that it is a trade association, the majority of whose members are producers and/or processors of a domestic like product in the United States.

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[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil,* 70 FR 5143 (February 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (February 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China,* 70 FR 5149 (February 1, 2005); and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand,* 70 FR 5145 (February 1, 2005) (collectively, *Orders*).

[2] *See Initiation of Five-Year ("Sunset") Review,* 81 FR 10578 (March 1, 2016) (*Notice of Initiation*). The *Notice of Initiation* also announced the initiation of the sunset review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam. However, the results of that sunset review will be discussed within a separate **Federal Register** notice in the context of a full sunset review in that case.

[3] *See* AHSTAC March 8, 2016, submission "Second Sunset Review of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam: Entry of Appearance, Notice of Intent to Participate in Review and APO Application." *See also* ASPA March 16, 2016, submissions "Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from Brazil (A–351–838): Notice of Intent to Participate of the American Shrimp Processors Association," "Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from India (A–533–840): Notice of Intent to Participate of the American Shrimp Processors Association," "Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from the People's Republic of China (A–570–893): Notice of Intent to Participate of the American Shrimp Processors Association," and "Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from Thailand (A–549–822): Notice of Intent to Participate of the American Shrimp Processors Association."

On March 29 and 31, 2016, respectively, the Department received complete substantive responses to the *Notice of Initiation* from AHSTAC[4] and from ASPA[5] (collectively, domestic interested parties) within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the orders on certain frozen warmwater shrimp from Brazil, India, the PRC, or Thailand, nor was a hearing requested. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the AD *Orders* on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand.

Scope of the Orders

The products covered by the *Orders* include certain frozen warmwater shrimp and prawns whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[6] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the *Orders,* regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the *Orders.* In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the orders.

Excluded from the *Orders* are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the *Orders* are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the orders is dispositive. The Issues and Decision Memorandum, which is hereby adopted by this notice, provides a full description of the scope of the *Orders.*[7]

Analysis of Comments Received

A complete discussion of all issues raised in these reviews is provided in the accompanying Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Orders* were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, the Department determines that revocation of the AD *Orders* on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to 67.80 percent for Brazil, up to 110.90 percent for India, up to 112.81 percent for the PRC, and up to 5.34 percent for Thailand.

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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[4] *See* AHSTAC March 29, 2016, submission "Second Sunset Review of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam: Substantive Response to Notice of Initiation."

[5] *See* ASPA March 31, 2016, submissions "Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from Brazil (A–351–838): Substantive Response to Notice of Initiation," "Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from India (A–533–840): Substantive Response to Notice of Initiation," "Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from the People's Republic of China (A–570–893): Substantive Response to Notice of Initiation," and "Second Sunset Review of the Antidumping Order on Frozen Warmwater Shrimp from Thailand (A–549–822): Substantive Response to Notice of Initiation."

[6] "Tails" in this context means the tail fan, which includes the telson and the uropods.

[7] *See* the Department's memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Expedited Second Sunset Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, and Thailand," dated concurrently with this notice (Issues and Decision Memorandum).

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: June 28, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–16053 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–042]

Stainless Steel Sheet and Strip From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 7, 2016.

FOR FURTHER INFORMATION CONTACT: Toni Page at (202) 482–1398 or Lingjun Wang at (202) 482–2316, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2016, the Department of Commerce (Department) initiated an antidumping duty (AD) investigation of imports of stainless steel sheet and strip from the People's Republic of China.[1] The notice of initiation stated that, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1), we would issue our preliminary determination no later than 140 days after the date of initiation, unless postponed. Currently, the preliminary determination is due no later than July 21, 2016.

Postponement of Preliminary Determinations

Sections 733(c)(1)(B)(i) and (ii) of the Act permit the Department to postpone the time limit for the preliminary determination if it concludes that the parties concerned are cooperating and determines that the case is extraordinarily complicated by reason of the number and complexity of the transactions to be investigated or adjustments to be considered, the novelty of the issues presented, or the number of firms whose activities must be investigated, and additional time is necessary to make the preliminary determination. Under this section of the Act, the Department may postpone the preliminary determination until no later than 190 days after the date on which the Department initiated the investigation.

The Department determines that the parties involved in this investigation are cooperating, and that the investigation is extraordinarily complicated. Additional time is required to analyze the questionnaire responses and issue any appropriate requests for clarification and additional information.

Therefore, in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1), the Department is postponing the time period for the preliminary determination of this investigation by 50 days, to September 9, 2016. Pursuant to section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 30, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–16134 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE675

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the U.S. Air Force 86 Fighter Weapons Squadron Conducting Long Range Strike Weapon Systems Evaluation Program at the Pacific Missile Range Facility at Kauai, Hawaii

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS (hereinafter, "we" or "our") received an application from the U.S. Department of the Air Force, 86 Fighter Weapons Squadron (86 FWS), requesting an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to a Long Range Strike Weapon Systems Evaluation Program (LRS WSEP) in the Barking Sands Underwater Range Extension (BSURE) area of the Pacific Missile Range Facility (PMRF) at Kauai, Hawaii. 86 FWS's activities are military readiness activities per the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act (NDAA) for Fiscal Year 2004. Pursuant to the MMPA, NMFS requests comments on its proposal to issue an IHA to 86 FWS to incidentally take, by Level A and Level B harassment, two species of marine mammals, the dwarf sperm whale (*Kogia sima*) and pygmy sperm whale (*Kogia breviceps)* during the specified activity.

DATES: NMFS must receive comments and information no later than August 8, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The email address for providing email comments is *ITP.McCue@noaa.gov*. Please include 0648–XE675 in the subject line. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for comments sent to addresses other than the one provided in this notice.

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[1] *See Stainless Steel Sheet and Strip From the People's Republic of China: Initiation of Less Than Fair Value Investigations,* 81 FR 12711 (March 10, 2016).

Instructions: All submitted comments are a part of the public record, and generally we will post them to *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

An electronic copy of the application may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm.* The following associated documents are also available at the same internet address: List of the references used in this document, and 86 FWS's Environmental Assessment (EA) titled, "Environmental Assessment/Overseas Environmental Assessment for the Long Range Strike Weapon Systems Evaluation Program Operational Evaluations." Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Laura McCue, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA(16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings for marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

The NDAA of 2004 (Pub. L. 108–136) removed the "small numbers" and "specified geographical region" limitations indicated earlier and amended the definition of harassment as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On May 12, 2016, NMFS received an application from 86 FWS for the taking of marine mammals, by harassment, incidental to the LRS WSEP within the PMRF in Kauai, Hawaii from September 1, 2016 through August 31, 2017. 86 FWS submitted a revised version of the renewal request on June 9, 2016 and June 20, 2016, which we considered adequate and complete.

The proposed LRS WSEP training activities would occur on September 1, 2016, with a backup date of September 2, 2016.

86 FWS proposes actions that include LRS WSEP test missions of the Joint Air-To-Surface Stand-off Missile (JASSM) and the Small Diameter Bomb–I/II (SDB–I/II) including detonations at the water surface. These activities qualify as a military readiness activities under the MMPA and NDAA.

The following aspects of the proposed LRS WSEP training activities have the potential to take marine mammals: Munition strikes and detonation effects (overpressure and acoustic components). Take, by Level B harassment of individuals of dwarf sperm whale and pygmy sperm whale could potentially result from the specified activity. Additionally, although NMFS does not expect it to occur, 86 FWS has also requested authorization for Level A Harassment of one individual dwarf sperm whale. Therefore, 86 FWS has requested authorization to take individuals of two cetacean species by Level A and Level B harassment.

86 FWS's LRS WSEP training activities may potentially impact marine mammals at or near the water surface in the absence of mitigation. Marine mammals could potentially be harassed, injured, or killed by exploding and non-exploding projectiles, falling debris, or ingestion of military expended materials. However, based on analyses provided in 86 FWS's 2016 application, 2016 Environmental Assessment (EA), and for reasons discussed later in this document, we do not anticipate that 86 FWS's LRS WSEP activities would result in any serious injury or mortality to marine mammals.

Description of the Specified Activity

Overview

86 FWS proposes to conduct air-to-surface mission in the BSURE area of the PMRF. The LRS WSEP test objective is to conduct operational evaluations of long range strike weapons and other munitions as part of LRS WSEP operations to properly train units to execute requirements within Designed Operational Capability Statements, which describe units' real-world operational expectations in a time of war. Due to threats to national security, increased missions involving air-to-surface activities have been directed by the Department of Defense (DoD). Accordingly, the U.S. Air Force seeks the ability to conduct operational evaluations of all phases of long range strike weapons within the U.S. Navy's Hawaii Range Complex (HRC). The actions would fulfill the Air Force's requirement to evaluate full-scale maneuvers for such weapons, including scoring capabilities under operationally realistic scenarios. LRS WSEP objectives are to evaluate air-to-surface and maritime weapon employment data, evaluate tactics, techniques, and procedures in an operationally realistic environment, and to determine the impact of tactics, techniques, and procedures on combat Air Force training. The munitions associated with the proposed activities are not part of a typical unit's training allocations, and prior to attending a WSEP evaluation, most pilots and weapon systems officers have only dropped weapons in simulators or used the aircraft's simulation mode. Without WSEP operations, pilots would be using these weapons for the first time in combat. On average, half of the participants in each unit drop an actual weapon for the first time during a WSEP evaluation. Consequently, WSEP is a military readiness activity and is the last opportunity for squadrons to receive operational training and evaluations before they deploy.

Dates and Duration

86 FWS proposes to schedule the LRS WSEP training missions over one day on September 1, 2016, with a backup day the following day. The proposed missions would occur on a weekday during daytime hours only, with all missions occurring in one day. This IHA would be valid from September 1, 2016 through August 31, 2017.

Specified Geographic Region

The specific planned impact area is approximately 44 nautical miles (nm)(81 kilometers (km)) offshore of Kauai, Hawaii, in a water depth of about 15,240 feet (ft) (4,645 meters (m)) (see Figure 2–2 of 86 FWS's application). All activities will take place within the PMRF, which is located in Hawaii off the western shores of the island of Kauai and includes broad ocean areas to the north, south, and west (see Figure 2–1 of 86 FWS's application).

Within the PMRF, activities would occur in the BSURE area, which lies in Warning Area 188 (W–188). The BSURE consists of about 900 nm^2 of instrumented underwater ranges, encompassing the deepwater portion of the PMRF and providing over 80 percent of PMRF's underwater scoring capability. The BSURE facilitates training, tactics, development, and test and evaluation for air, surface, and subsurface weapons systems in deep water. It provides a full spectrum of range support, including radar, underwater instrumentation, telemetry, electronic warfare, remote target command and control, communications, data display and processing, and target/weapon launching and recovery facilities. The underwater tracking system begins 9 nm (17 km) from the north shore of Kauai and extends out to 40 nm (74 km) from shore. LRS WSEP missions would employ live weapons with long flight paths requiring large amounts of airspace and conclude with weapon impact and surface detonations within the BSURE instrumented range.

Detailed Description of Activities

The LRS WSEP training missions, classified as military readiness activities, refer to the deployment of live (containing explosive charges) missiles from aircraft toward the water surface. The actions include air-to-surface test missions of the JASSM and the SDB–I/II including detonations at the water surface.

Aircraft used for munition releases would include bombers and fighter aircraft. Additional airborne assets, such as the P–3 Orion or the P–8 Poseidon, would be used to relay telemetry (TM) and flight termination system (FTS) streams between the weapon and ground stations. Other support aircraft would be associated with range clearance activities before and during the mission and with air-to-air refueling operations. All weapon delivery aircraft would originate from an out base and fly into military-controlled airspace prior to employment. Due to long transit times between the out base and mission location, air-to-air refueling may be conducted in either W–188 or W–189. Bombers, such as the B–1, would deliver the weapons, conduct air-to-air refueling, and return to their originating base as part of one sortie. However, when fighter aircraft are used, the distance and corresponding transit time to the various potential originating bases would make return flights after each mission day impractical. In these cases, the aircraft would temporarily (less than one week) park overnight at Hickam Air Force Base (HAFB) and would return to their home base at the conclusion of each mission set. Multiple weapon release aircraft would be used during some missions, each potentially releasing multiple munitions. The LRS WSEP missions scheduled for 2016 are proposed to occur in one day, with the following day reserved as a back-up day. Approximately 10 Air Force personnel would be on temporary duty to support the mission.

Aircraft flight maneuver operations and weapon release would be conducted in W–188A boundaries of PMRF. Chase aircraft may be used to evaluate weapon release and to track weapons. Flight operations and weapons delivery would be in accordance with published Air Force directives and weapon operational release parameters, as well as all applicable Navy safety regulations and criteria established specifically for PMRF. Aircraft supporting LSR WSEP missions would primarily operate at high altitudes—only flying below 3,000 feet for a limited time as needed for escorting non-military vessels outside the hazard area or for monitoring the area for protected marine species (*e.g.*, marine mammals, sea turtles). Protected marine species aerial surveys would be temporary and would focus on an area surrounding the weapon impact point on the water.

Post-mission surveys would focus on the area down current of the weapon impact location. Range clearance procedures for each mission would cover a much larger area for human safety. Weapon release parameters would be conducted as approved by PMRF Range Safety. Daily mission briefs would specify planned release conditions for each mission. Aircraft and weapons would be tracked for time, space, and position information. The 86 FWS test director would coordinate with the PMRF Range Safety Officer, Operations Conductor, Range Facility Control Officer, and other applicable mission control personnel for aircraft control, range clearance, and mission safety.

Joint Air-to-Surface Stand-Off Missile/Joint Air-to-Surface Stand-Off Missile-Extended Range (JASSM/JASSM–ER)

The JASSM is a stealthy precision cruise missile designed for launch outside area defenses against hardened, medium-hardened, soft, and area type targets. The JASSM has a range of more than 200 nm (370 km) and carries a 1,000-pound (lb) warhead with approximately 300 lbs of 2,4,6-trinitrotoluene (TNT) equivalent net explosive weight (NEW). The specific explosive used is AFX–757, a type of plastic bonded explosive (PBX). The weapon has the capability to fly a preprogrammed route from launch to a target, using Global Positioning System (GPS) technology and an internal navigation system (INS) combined with a Terminal Area Model when available. Additionally, the weapon has a Common Low Observable Auto-Routing function that gives the weapon the ability to find the route that best utilizes the low observable qualities of the JASSM. In either case, these routes can be modeled prior to weapon release. The JASSM–ER has additional fuel and a different engine for a greater range than the JASSM (500 nm (926 km)) but maintains the same functionality of the JASSM.

Small Diameter Bomb–I/Small Diameter Bomb–II (SDB–I/SDB–II)

The SDB–I is a 250-lb air-launched GPS–INS guided weapon for fixed soft to hardened targets. SDB–II expands the SDB–I capability with network enabling and uses a tri-mode sensor infrared, millimeter, and semi-active laser to attack both fixed and movable targets. Both munitions have a range of up to 60 NM (111 km). The SDB–I contains 37 lbs of TNT-equivalent NEW, and the SDB–II contains 23 lbs NEW. The explosive used in both SDB–I and SDB–II is AFX–757.

Initial phases of the LRS WSEP operational evaluations are proposed for September 2016 and would consist of releasing only one live JASSM/JASSM–ER and up to eight SDBs in military controlled airspace (Table 1). Immediate evaluations for JASSM/JASSM–ER and SDB–I are needed; therefore, they are the only munitions being proposed for summer 2016 missions. Weapon release parameters for 2016 missions would involve a B–1 bomber releasing one live JASSM and fighter aircraft, such as F–15, F–16, or F–22, releasing live SDB–I. Up to four SDB–I munitions would be released simultaneously, similar to a ripple effect, each hitting the water surface within a few seconds of each other; however, the SDB–I releases would occur separate from the JASSM. All releases would occur on the same mission day.

TABLE 1—SUMMARY OF PROPOSED TESTING AT PMRF IN 2016

Munition	Fusing option	Net explosive weight (lb)	Detonation scenario	Annual total number of munitions
JASSM/JASSM–ER	Live/Instantaneous	300	Surface	1
SDB–I	Live/Instantaneous	37	Surface	8

ER = Extended Range; JASSM = Joint Air-to-Surface Stand-off Missile; lb = pounds; SDB = Small Diameter Bomb.

A typical mission day would consist of pre-mission checks, safety review, crew briefings, weather checks, clearing airspace, range clearance, mitigations/monitoring efforts, and other military protocols prior to launch of weapons. Potential delays could be the result of multiple factors including, but not limited to; adverse weather conditions leading to unsafe take-off, landing, and aircraft operations, inability to clear the range of non-mission vessels or aircraft, mechanical issues with mission aircraft or munitions, or presence of protected species in the impact area. If the mission is cancelled due to any of these, one back-up day has also been scheduled as a contingency. These standard operating procedures are usually done in the morning, and live range time may begin in late morning once all checks are complete and approval is granted from range control. The range would be closed to the public for a maximum of four hours per mission day.

Each long range strike weapon would be released in W–188A and would follow a given flight path with programmed GPS waypoints to mark its course in the air. Long range strike weapons would complete their maximum flight range (up to 500 nm distance for JASSM–ER) at an altitude of approximately 18,000 ft (equivalent in kms) mean sea level (MSL) and terminate at a specified location for scoring of the impact. The cruise time would vary among the munitions but would be about 45 minutes for JASSM/JASSM–ER and 10 minutes for SDB–I/II. The time frame between employments of successive munitions would vary, but releases could be spaced by approximately one hour to account for the JASSM cruise time. The routes and associated safety profiles would be contained within W–188A boundaries. The objective of the route designs is to complete full-scale evasive maneuvers that avoid simulated threats and would, therefore, not consist of a standard "paper clip" or regularly shaped route. The final impact point on the water surface would be programmed into the munitions for weapons scoring and evaluations.

All missions would be conducted in accordance with applicable flight safety, hazard area, and launch parameter requirements established for PMRF. A weapon hazard region would be established, with the size and shape determined by the maximum distance a weapon could travel in any direction during its descent. The hazard area is typically adjusted for potential wind speed and direction, resulting in a maximum composite safety footprint for each mission (each footprint boundary is at least 10 nm from the Kauai coastline). This information is used to establish a Launch Exclusion Area and Aircraft Hazard Area. These exclusion areas must be verified to be clear of all non-mission and non-essential vessels and aircraft before live weapons are released. In addition, a buffer area must also be clear on the water surface so that vessels do not enter the exclusion area during the launch window. Prior to weapon release, a range sweep of the hazard area would be conducted by participating mission aircraft or other appropriate aircraft, potentially including S–61N helicopter, C–26 aircraft, fighter aircraft (F–15E, F–16, F–22), or the Coast Guard's C–130 aircraft.

PMRF has used small water craft docked at the Port Allen public pier to keep nearshore areas clear of tour boats for some mission launch areas. However, for missions with large hazard areas that occur far offshore from Kauai, it would be impractical for these smaller vessels to conduct range clearance activities. The composite safety footprint weapons associated with LRS WSEP missions is anticipated to be rather large; therefore, it is likely that range clearing activities would be conducted solely by aircraft.

The Range Facility Control Officer is responsible for establishing hazard clearance areas, directing clearance and surveillance assets, and reporting range status to the Operations Conductor. The Control Officer is also responsible for submitting all Notice to Airmen (NOTAMs) and Notice to Mariners (NOTMARs), and for requesting all Federal Aviation Administration airspace clearances.

Description of Marine Mammals in the Area of the Specified Activity

There are 25 marine mammal species with potential or confirmed occurrence in the proposed activity area; however, not all of these species occur in this region during the project timeframe. Table 2 lists and summarizes key information regarding stock status and abundance of these species. Please see NMFS' 2015 Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars* for more detailed accounts of these stocks' status and abundance.

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE BSURE AREA

Species	Stock	ESA/MMPA Status; Strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR [3]	Occurrence in BSURE Area
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)					
Family: Balaenopteridae					
Humpback whale (*Megaptera novaeangliae*).[4]	Central North Pacific	Y; Y	10,103 (0.300; 7,890; 2006)	83	Seasonal; throughout known breeding grounds during winter and spring (most common November through April).
Blue Whale (*Balaenoptera musculus*).	Central North Pacific	Y; Y	81 (1.14; 38; 2010)	0.1	Seasonal; infrequent winter migrant; few sightings, mainly fall and winter; considered rare.
Fin whale (*Balaenoptera physalus*.	Hawaii	Y; Y	58 (1.12; 27; 2010)	0.1	Seasonal, mainly fall and winter; considered rare.
Sei whale (*Balaenoptera borealis*).	Hawaii	Y; Y	178 (0.90; 93; 2010)	0.2	Rare; limited sightings of seasonal migrants that feed at higher latitudes.
Bryde's whale (*Balaenoptera brydei/edeni*).	Hawaii	-; N	798 (0.28; 633; 2010)	6.3	Uncommon; distributed throughout the Hawaiian EEZ.
Minke whale (*Balaenoptera acutorostrata*).	Hawaii	-; N	n/a (n/a; n/a; 2010)	Undet.	Regular but seasonal (October–April).
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family: Physeteridae					
Sperm whale (*Physeter macrocephalus*).	Hawaii	Y; Y	3,354 (0.34; 2,539; 2010)	10.2	Widely distributed year round; more likely in waters >1,000 m depth, most often >2,000 m.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family: Kogiidae					
Pygmy sperm whale (*Kogia breviceps*).	Hawaii	-; N	n/a (n/a; n/a; 2010)	Undet.	Widely distributed year round; more likely in waters >1,000 m depth.
Dwarf sperm whale (*Kogia sima*).	Hawaii	-; N	n/a (n/a; n/a; 2010)	Undet.	Widely distributed year round; more likely in waters >500 m depth.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family delphinidae					
Killer whale (*Orcinus orca*)	Hawaii	-; N	101 (1.00; 50; 2010)	1	Uncommon; infrequent sightings.
False killer whale (*Pseudorca crassidens*).	Hawaii Pelagic NWHI Stock	-; N -; N	1,540 (0.66; 928; 2010) 617 (1.11; 290; 2010)	9.3 2.3	Regular. Regular.
Pygmy killer whale (*Feresa attenuata*).	Hawaii	-; N	3,433 (0.52; 2,274; 2010)	23	Year-round resident.
Short-finned pilot whale (*Globicephala macrorhynchus*).	Hawaii	-; N	12,422 (0.43; 8,872; 2010)	70	Commonly observed around Main Hawaiian Islands and Northwestern Hawaiian Islands.
Melon headed whale (*Peponocephala electra*).	Hawaii Islands stock	-; N	5,794 (0.20; 4,904; 2010)	4	Regular.
Bottlenose dolphin (*Tursiops truncatus*).	Hawaii pelagic	-; N	5,950 (0.59; 3,755; 2010)	38	Common in deep offshore waters.
Pantropical spotted dolphin (*Stenella attenuata*).	Hawaii pelagic	-; N	15,917 (0.40; 11,508; 2010)	115	Common; primary occurrence between 100 and 4,000 m depth.

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE BSURE AREA—Continued

Species	Stock	ESA/MMPA Status; Strategic (Y/N)[1]	Stock abundance (CV, Nmin, most recent abundance survey)[2]	PBR[3]	Occurrence in BSURE Area
Striped dolphin (*Stenella coeruleoala*).	Hawaii	-; N	20,650 (0.36; 15,391; 2010)	154	Occurs regularly year round but infrequent sighting during survey.
Spinner dolphin (*Stenella longirostris*).	Hawaii pelagic	-; N	n/a (n/a; n/a; 2010)	Undet.	Common year-round in offshore waters.
Rough-toothed dolphins (*Steno bredanensis*).	Hawaii stock	-; N	6,288 (0.39; 4,581; 2010)	46	Common throughout the Main Hawaiian Islands and Hawaiian Islands EEZ.
Fraser's dolphin (*Lagenodelphis hosei*).	Hawaii	-; N	16,992 (0.66; 10,241; 2010)	102	Tropical species only recently documented within Hawaiian Islands EEZ (2002 survey).
Risso's dolphin (*Grampus griseus*).	Hawaii	-; N	7,256 (0.41; 5,207; 2010)	42	Previously considered rare but multiple sightings in Hawaiian Islands EEZ during various surveys conducted from 2002–2012.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family: Ziphiidae					
Cuvier's beaked whale (*Ziphius cavirostris*).	Hawaii	-; N	1,941 (n/a; 1,142; 2010)	11.4	Year-round occurrence but difficult to detect due to diving behavior.
Blainville's beaked whale (*Mesoplodon densirostris*).	Hawaii	-; N	2,338 (1.13; 1,088; 2010)	11	Year-round occurrence but difficult to detect due to diving behavior.
Longman's beaked whale (*Indopacetus pacificus*).	Hawaii	-; N	4,571 (0.65; 2,773; 2010)	28	Considered rare; however, multiple sightings during 2010 survey.
Order—Carnivora—Superfamily Pinnipedia (seals, sea lions)					
Family: Phocidae					
Hawaiian monk seal (*Neomonachus schauinslandi*).	Hawaii	Y; Y	1,112 (n/a; 1,088; 2013)	Undet.	Predominantly occur at Northwestern Hawaiian Islands; approximately 138 individuals in Main Hawaiian Islands.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2015 Pacific SARs, except humpback whales—see comment 4.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] Values for humpback whales are from the 2015 Alaska SAR.

Of these 25 species, six are listed as endangered under the ESA and as depleted throughout its range under the MMPA. These are: humpback whale, blue whale, fin whale, sei whale, sperm whale, and the Hawaiian monk seal.

Of the 25 species that may occur in Hawaiian waters, only certain stocks occur in the impact area, while others are island-associated or do not occur at the depths of the impact area (*e.g.* false killer whale insular stock, island-associated stocks of bottlenose, spinner, and spotted dolphins). Only two species are considered likely to be in the impact area during the one day of project activities (dwarf sperm whale and pygmy sperm whale). Other species are seasonal and only occur in these waters in the fall or winter (humpback whale, blue whale, fin whale, sei whale, minke whale, killer whale); some are rare in the area (Longman's beaked whale, Bryde's whale); and others are unlikely to be impacted due to small density estimates (False killer whale, pygmy killer whale, short-finned pilot whale, melon-headed whale, bottlenose dolphin, Pantropical spotted dolphin, striped dolphin, spinner dolphin, rough-toothed dolphin, Fraser's dolphin, Risso's dolphin, Cuvier's beaked whale, Blainville's beaked whale, and Hawaiian monk seal). Because these 22 species are unlikely to occur within the BSURE area, 86 FWS has not requested and NMFS has not proposed the issuance of take authorizations for them. Thus, NMFS does not consider these species further in this notice.

We have reviewed 86 FWS's species descriptions, including life history information, distribution, regional distribution, diving behavior, and acoustics and hearing, for accuracy and completeness. We refer the reader to Sections 3 and 4 of 86 FWS's application and to Chapter 3 in 86 FWS's EA rather than reprinting the information here.

Below, for those species that are likely to be taken by the activities described, we offer a brief introduction to the species and relevant stock as well as available information regarding population trends and threats, and describe any information regarding local occurrence.

Dwarf Sperm Whale

Dwarf sperm whales are found throughout the world in tropical to warm-temperate waters (Caretta *et al.,* 2014). They are usually found in waters deeper than 500 m, most often sighted in depths between 500 and 1,000 m, but they have been documented in depths as shallow as 106 m and as deep as 4,700 m (Baird, in press). This species is often alone or in small groups of up to two to four individuals (average group size of 2.7 individuals), with a maximum group size observed of eight individuals (Baird, in press). When there are more than two animals together, they are often loosely associated, with up to several hundred meters between pairs of individuals (Baird, in press).

There is one stock of dwarf sperm whales in Hawaii. Sighting data suggests a small resident population off Hawaii Island (Baird, in press). There are no current abundance estimates for this stock. In 2002, a survey off Hawaii estimated the abundance at 17,159; however, this data is outdated and is no longer used. PBR cannot be calculated due to insufficient data. It has been suggested that this species is probably one of the more abundant species of cetaceans in Hawaiian waters (Baird, in press). One of their main threats is interactions with fisheries; however, dwarf sperm whales are also sensitive to high-intensity underwater sounds and navy sonar testing. This stock is not listed as endangered under the ESA and is not considered strategic or designated as depleted under the MMPA (Caretta *et al.,* 2013).

Pygmy Sperm Whale

Pygmy killer whales are found in tropical and subtropical waters throughout the world (Ross and Leatherwood 1994). This species prefers deeper waters, with observations of this species in greater than 4,000 m depth (Baird *et al.,* 2013); and, based on stomach contents from stranded individuals, pygmy sperm whales forage between 600 and 1,200 m depth (Baird, in press). Sightings are rare of this species, but observations include lone individuals or pairs, with an average group size of 1.5 individuals (Baird, in press).

There is a single stock of Pygmy killer whales in Hawaii. Current abundance estimates for this stock are unknown. A 2002 survey in Hawaii estimated 7,138 animals; however, this data is outdated and is no longer used. PBR cannot be calculated due to insufficient data. (Caretta *et al.,* 2014). The main threats to this species are fisheries interactions and effects from underwater sounds such as active sonar (Caretta *et al.,* 2014). This stock is not listed as endangered under the ESA, and is not considered strategic or designated as depleted under the MMPA (Caretta *et al.,* 2014).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components (*e.g.,* munition strikes and detonation effects) of the specified activity, including mitigation, may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document will include a quantitative analysis of the number of individuals that we expect 86 FWS to take during this activity. The *Negligible Impact Analysis* section will include the analysis of how this specific activity would impact marine mammals, and will consider the content of this section, the *Estimated Take by Incidental Harassment* section and the *Proposed Mitigation* section to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks. In the following discussion, we provide general background information on sound and marine mammal hearing before considering potential effects to marine mammals from sound produced by surface detonations.

Description of Sound Sources and WSEP Sound Types

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave. Amplitude is the height of the sound pressure wave or the "loudness" of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that we reference all underwater sound levels in this document to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that one can account for the values in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- Biological: Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- Anthropogenic: Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise "ambient" or "background" sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

The sounds produced by the proposed WSEP activities are considered impulsive, which is one of two general sound types, the other being non-pulsed. The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Impulsive sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. These sounds have a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals, and exposure to sound can have deleterious effects. To appropriately assess these potential effects, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007). The functional groups and the associated frequencies are indicated below (note that these frequency ranges do not necessarily correspond to the range of best hearing, which varies by species):

- Low frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 25 kHz (up to 30 kHz in some species), with best hearing estimated to be from 100 Hz to 8 kHz (Watkins, 1986; Ketten, 1998; Houser *et al.,* 2001; Au *et al.,* 2006; Lucifredi and Stein, 2007; Ketten *et al.,* 2007; Parks *et al.,* 2007a; Ketten and Mountain, 2009; Tubelli *et al.,* 2012);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz with best hearing from 10 to less than 100 kHz (Johnson, 1967; White, 1977; Richardson *et al.,* 1995; Szymanski *et al.,* 1999; Kastelein *et al.,* 2003; Finneran *et al.,* 2005a, 2009; Nachtigall *et al.,* 2005, 2008; Yuen *et al.,* 2005; Popov *et al.,* 2007; Au and Hastings, 2008; Houser *et al.,* 2008; Pacini *et al.,* 2010, 2011; Schlundt *et al.,* 2011);
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* now considered to include two members of the genus *Lagenorhynchus* on the basis of recent echolocation data and genetic data [May-Collado and Agnarsson, 2006; Kyhn *et al.,* 2009, 2010; Tougaard *et al.,* 2010]): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz (Popov and Supin, 1990a,b; Kastelein *et al.,* 2002; Popov *et al.,* 2005);
- Phocid pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 100 kHz with best hearing between 1–50 kHz (Møhl, 1968; Terhune and Ronald, 1971, 1972; Richardson *et al.,* 1995; Kastak and Schusterman, 1999;

Reichmuth, 2008; Kastelein *et al.*, 2009); and

- Otariid pinnipeds in Water: functional hearing is estimated to occur between approximately 100 Hz and 48 kHz, with best hearing between 2–48 kHz (Schusterman *et al.*, 1972; Moore and Schusterman, 1987; Babushina *et al.*, 1991; Richardson *et al.*, 1995; Kastak and Schusterman, 1998; Kastelein *et al.*, 2005a; Mulsow and Reichmuth, 2007; Mulsow *et al.*, 2011a, b).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth *et al.*, 2013).

There are two marine mammal species (both cetaceans, the dwarf and pygmy sperm whale) with expected potential to co-occur with 86 FWS WSEP military readiness activities. The *Kogia* species are classified as high-frequency cetaceans. A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

Acoustic Impacts

Please refer to the information given previously (*Description of Sound Sources*) regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Götz *et al.*, 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to 86 FWS's activities.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.*, when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.*, certain non-auditory physical or physiological effects and mortality) only briefly as we do not expect that there is a reasonable likelihood that 86 FWS's activities may result in such effects (see below for further discussion). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002, 2005b). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.*, 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.*, tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.*, 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.*, Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.*, 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40–dB threshold shift approximates PTS onset; *e.g.*, Kryter *et al.*, 1966; Miller, 1974) that inducing mild TTS (a 6–dB threshold shift approximates TTS onset; *e.g.*, Southall *et al.*, 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as bombs) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.*, change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007). 86 FWS's activities involve the use of devices such as explosives that are associated with these types of effects; however, severe injury to marine mammals is not anticipated from these activities.

When a live or dead marine mammal swims or floats onto shore and is incapable of returning to sea, the event is termed a "stranding" (16 U.S.C. 1421h(3)). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series (*e.g.*, Geraci *et al.*, 1999). However, the cause or causes of most strandings are unknown (*e.g.*, Best, 1982). Combinations of dissimilar stressors may combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other would not be expected to produce the same outcome (*e.g.*, Sih *et al.*, 2004). For further description of stranding events see, *e.g.*, Southall *et al.*, 2006; Jepson *et al.*, 2013; Wright *et al.*, 2013.

1. *Temporary threshold shift*—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the data published at the time of this writing concern TTS elicited by exposure to multiple pulses of sound.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale [*Delphinapterus leucas*], harbor porpoise [*Phocoena phocoena]*, and Yangtze finless porpoise [*Neophocoena asiaeorientalis*]) and three species of pinnipeds (northern elephant seal [*Mirounga angustirostris*], harbor seal [*Phoca vitulina*], and California sea lion [*Zalophus californianus*]) exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (*e.g.*, Finneran *et al.*, 2002; Nachtigall *et al.*, 2004; Kastak *et al.*, 2005; Lucke *et al.*, 2009; Popov *et al.*, 2011). In general, harbor seals (Kastak *et al.*, 2005; Kastelein *et al.*, 2012a) and harbor porpoises (Lucke *et al.*, 2009; Kastelein *et al.*, 2012b) have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007) and Finneran and Jenkins (2012).

2. *Behavioral effects*—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a "progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial," rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.*, 1995; Nowacek *et al.*, 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*, Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*; 2004; Goldbogen *et al.*, 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.*, foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

3. *Stress responses*—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.*, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (*e.g.*, Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as "distress." In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

4. *Auditory masking*—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.*, snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.*, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.*, signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.*, sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.*, Clark *et al.*, 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.*, Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007b; Di Iorio and Clark, 2009; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.*, Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.*, Branstetter *et al.*, 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.*, from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

The LRS WSEP training exercises proposed for the incidental take of marine mammals have the potential to take marine mammals by exposing them to impulsive noise and pressure waves generated by live ordnance detonation at the surface of the water. Exposure to energy, pressure, or direct strike by ordnance has the potential to result in non-lethal injury (Level A harassment), disturbance (Level B harassment), serious injury, and/or mortality. In addition, NMFS also considered the potential for harassment from vessel and aircraft operations.

Acoustic Effects, Underwater

Explosive detonations at the water surface send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. The shock wave and accompanying noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in greater impacts to an individual animal.

The effects of underwater detonations on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the sound; the depth of the water column; the substrate of the habitat; the standoff distance between activities and the animal; and the sound propagation properties of the environment. Thus, we expect impacts to marine mammals from LRS WSEP activities to result primarily from acoustic pathways. As such, the degree of the effect relates to the received level and duration of the sound exposure, as influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be.

The potential effects of underwater detonations from the proposed LRS WSEP training activities may include one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007). However, the effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.*, 1995).

In the absence of mitigation, impacts to marine species could result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.*, 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals.

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift. Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa2-s (*i.e.*, 186 dB sound exposure level (SEL) or approximately 221–226 dB p-p (peak)) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007).

Serious Injury/Mortality: 86 FWS proposes to use surface detonations in its training exercises. The explosions from these weapons would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. In general, potential impacts from explosive detonations can range from brief effects (such as short term behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs, and death of the animal (Yelverton *et al.*, 1973; O'Keeffe and Young, 1984; DoN, 2001). The effects of an underwater explosion on a marine mammal depend on many factors, including: the size, type, and depth of both the animal and the explosive charge; the depth of the water column; the standoff distance between the charge and the animal, and the sound propagation properties of the environment. Physical damage of tissues resulting from a shock wave (from an explosive detonation) constitutes an injury. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and gas containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible to damage (Goertner, 1982; Yelverton *et al.*, 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, cochlear damage, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN, 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of proximity to the point of detonation (DoN, 2001).

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Numerous studies have shown that underwater sounds are often readily detectable by marine mammals in the water at distances of many kilometers. However, other studies have shown that marine mammals at distances more than a few kilometers away often show no apparent response to activities of various types (Miller *et al.*, 2005). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from impulsive sources such as airguns, at other times, mammals of all three types have shown no overt reactions (*e.g.*, Malme *et al.*, 1986; Richardson *et al.*, 1995; Madsen and Mohl, 2000; Croll *et al.*, 2001; Jacobs and Terhune, 2002; Madsen *et al.*, 2002; MacLean and Koski, 2005; Miller *et al.*, 2005; Bain and Williams, 2006).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Thorson and Reyff, 2006; see also Gordon *et al.*, 2004; Wartzok *et al.*, 2003; Nowacek *et al.*, 2007).

Because the few available studies show wide variation in response to underwater sound, it is difficult to quantify exactly how sound from the LRS WSEP operational testing would affect marine mammals. It is likely that the onset of surface detonations could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.*, 1995): changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located.

The biological significance of any of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However generally, one could expect the consequences of behavioral modification to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.*, 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound interferes with by another coincident sound at similar frequencies and at similar or higher levels (Clark *et al.*, 2009). While it may occur temporarily, we do not expect auditory masking to result in detrimental impacts to an individual's or population's survival, fitness, or reproductive success. Dolphin movement is not restricted within the BSURE area, allowing for movement out of the area to avoid masking impacts and the sound resulting from the detonations is short in duration. Also, masking is typically of greater concern for those marine mammals that utilize low frequency communications, such as baleen whales and, as such, is not likely to occur for marine mammals in the BSURE area.

Vessel and Aircraft Presence

The marine mammals most vulnerable to vessel strikes are slow-moving and/or spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.*, North Atlantic right whales (*Eubalaena glacialis*), fin whales, and sperm whales). Smaller marine mammals are agile and move more quickly through the water, making them less susceptible to ship strikes. NMFS and 86 FWS are not aware of any vessel strikes of dwarf and pygmy sperm whales within in BSURE area during training operations, and both parties do not anticipate that potential 86 FWS vessels engaged in the specified activity would strike any marine mammals.

Dolphins within Hawaiian waters are exposed to recreational, commercial, and military vessels. Behaviorally, marine mammals may or may not respond to the operation of vessels and associated noise. Responses to vessels vary widely among marine mammals in general, but also among different species of small cetaceans. Responses may include attraction to the vessel (Richardson *et al.*, 1995); altering travel patterns to avoid vessels (Constantine, 2001; Nowacek *et al.*, 2001; Lusseau, 2003, 2006); relocating to other areas (Allen and Read, 2000); cessation of feeding, resting, and social interaction (Baker *et al.*, 1983; Bauer and Herman, 1986; Hall, 1982; Krieger and Wing, 1984; Lusseau, 2003; Constantine *et al.*, 2004); abandoning feeding, resting, and nursing areas (Jurasz and Jurasz 1979; Dean *et al.*, 1985; Glockner-Ferrari and Ferrari, 1985, 1990; Lusseau, 2005; Norris *et al.*, 1985; Salden, 1988; Forest, 2001; Morton and Symonds, 2002; Courbis, 2004; Bejder, 2006); stress (Romano *et al.*, 2004); and changes in acoustic behavior (Van Parijs and Corkeron, 2001). However, in some studies marine mammals display no reaction to vessels (Watkins, 1986; Nowacek *et al.*, 2003) and many odontocetes show considerable tolerance to vessel traffic (Richardson *et al.*, 1995). Dolphins may actually reduce the energetic cost of traveling by riding the bow or stern waves of vessels (Williams *et al.*, 1992; Richardson *et al.*, 1995).

Aircraft produce noise at frequencies that are well within the frequency range of cetacean hearing and also produce visual signals such as the aircraft itself and its shadow (Richardson *et al.*, 1995, Richardson and Wursig, 1997). A major difference between aircraft noise and noise caused by other anthropogenic sources is that the sound is generated in the air, transmitted through the water surface and then propagates underwater to the receiver, diminishing the received levels significantly below what is heard above the water's surface. Sound transmission from air to water is greatest in a sound cone 26 degrees directly under the aircraft.

There are fewer reports of reactions of odontocetes to aircraft than those of pinnipeds. Responses to aircraft by pinnipeds include diving, slapping the water with pectoral fins or tail fluke, or swimming away from the track of the aircraft (Richardson *et al.*, 1995). The nature and degree of the response, or the lack thereof, are dependent upon the nature of the flight (*e.g.*, type of aircraft, altitude, straight vs. circular flight pattern). Wursig *et al.* (1998) assessed the responses of cetaceans to aerial surveys in the north central and western Gulf of Mexico using a DeHavilland Twin Otter fixed-wing airplane. The plane flew at an altitude of 229 m (751.3 ft) at 204 km/hr (126.7 mph) and maintained a minimum of 305 m (1,000 ft) straight line distance from the cetaceans. Water depth was 100 to 1,000 m (328 to 3,281 ft). Bottlenose dolphins most commonly responded by diving (48 percent), while 14 percent responded by moving away. Other species (*e.g.*, beluga (*Delphinapterus leucas*) and sperm whales) show considerable variation in reactions to aircraft but diving or swimming away from the aircraft are the most common reactions to low flights (less than 500 m; 1,640 ft).

Direct Strike by Ordnance

Another potential risk to marine mammals is direct strike by ordnance, in which the ordnance physically hits an animal. While strike from an item at the surface of the water while the animals is at the surface is possible, the potential risk of a direct hit to an animal within the target area would be so low because marine mammals spend the majority of their time below the surface of the water, and the potential for one bomb or missile to hit that animal at that specific time is highly unlikely since there are only a total of eight bombs on one day.

Anticipated Effects on Habitat

Detonations of live ordnance would result in temporary changes to the water environment. An explosion on the surface of the water from these weapons could send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. However, these effects would be temporary and not expected to last more than a few seconds. Similarly, 86 FWS does not expect any long-term impacts with regard to hazardous constituents to occur. 86 FWS considered the introduction of fuel, debris, ordnance, and chemical materials into the water column within its EA and determined the potential effects of each to be insignificant. We summarize 86 FWS's analyses in the following paragraphs (for a complete discussion of potential effects, please refer to section 3.0 in 86 FWS's EA).

Metals typically used to construct bombs and missiles include aluminum, steel, and lead, among others. Aluminum is also present in some explosive materials. These materials would settle to the seafloor after munitions detonate. Metal ions would slowly leach into the substrate and the water column, causing elevated concentrations in a small area around the munitions fragments. Some of the metals, such as aluminum, occur naturally in the ocean at varying concentrations and would not necessarily impact the substrate or water column. Other metals, such as lead, could cause toxicity in microbial communities in the substrate. However, such effects would be localized to a very small distance around munitions fragments and would not significantly affect the overall habitat quality of sediments in the BSURE area. In addition, metal fragments would corrode, degrade, and become encrusted over time.

Chemical materials include explosive byproducts and also fuel, oil, and other fluids associated with remotely controlled target boats. Explosive byproducts would be introduced into the water column through detonation of live munitions. Explosive materials would include 2,4,6-trinitrotoluene (TNT) and research department explosive (RDX), among others. Various byproducts are produced during and immediately after detonation of TNT and RDX. During the very brief time that a detonation is in progress, intermediate products may include carbon ions, nitrogen ions, oxygen ions, water, hydrogen cyanide, carbon monoxide, nitrogen gas, nitrous oxide, cyanic acid, and carbon dioxide (Becker, 1995). However, reactions quickly occur between the intermediates, and the final products consist mainly of water, carbon monoxide, carbon dioxide, and nitrogen gas, although small amounts of other compounds are typically produced as well.

Chemicals introduced into the water column would be quickly dispersed by waves, currents, and tidal action, and eventually become uniformly distributed. A portion of the carbon compounds such as carbon monoxide and carbon dioxide would likely become integrated into the carbonate system (alkalinity and pH buffering capacity of seawater). Some of the nitrogen and carbon compounds, including petroleum products, would be metabolized or assimilated by phytoplankton and bacteria. Most of the gas products that do not react with the water or become assimilated by organisms would be released into the atmosphere. Due to dilution, mixing, and transformation, none of these chemicals are expected to have significant impacts on the marine environment.

Explosive material that is not consumed in a detonation could sink to the substrate and bind to sediments. However, the quantity of such materials is expected to be inconsequential. Research has shown that if munitions function properly, nearly full combustion of the explosive materials will occur, and only extremely small amounts of raw material will remain. In addition, any remaining materials would be naturally degraded. TNT decomposes when exposed to sunlight (ultraviolet radiation), and is also degraded by microbial activity (Becker, 1995). Several types of microorganisms have been shown to metabolize TNT. Similarly, RDX decomposes by hydrolysis, ultraviolet radiation exposure, and biodegradation.

While we anticipate that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat and prey resources would be temporary and reversible. The main impact associated with the proposed activity would be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice. Marine mammals are anticipated to temporarily vacate the area of live detonations. However, these events are usually of short duration, and animals are anticipated to return to the activity area during periods of non-activity. Thus, based on the preceding discussion, we do not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses (where relevant).

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the incidental take authorization process such that "least practicable adverse impact" shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

NMFS and 86 FWS have worked to identify potential practicable and effective mitigation measures, which include a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the "military-readiness activity." We refer the reader to Section 11 of 86 FWS's application for more detailed information on the proposed mitigation measures which include the following:

Visual Aerial Surveys: For the LRS WSEP activities, mitigation procedures consist of visual aerial surveys of the impact area for the presence of protected marine species (including marine mammals). During aerial observation, Navy test range personnel may survey the area from an S–61N helicopter or C–62 aircraft that is based at the PMRF land facility (typically when missions are located relatively close to shore). Alternatively, when missions are located farther offshore, surveys may be conducted from mission aircraft (typically jet aircraft such as F–15E, F–16, or F–22) or a U.S. Coast Guard C–130 aircraft.

Protected species surveys typically begin within one hour of weapon release and as close to the impact time as feasible, given human safety requirements. Survey personnel must depart the human hazard zone before weapon release, in accordance with Navy safety standards. Personnel conduct aerial surveys within an area defined by an approximately 2–NM (3,704 m) radius around the impact point, with surveys typically flown in a star pattern. This survey distance is consistent with requirements already in place for similar actions at PMRF and encompasses the entire TTS threshold ranges (SEL) for mid-frequency cetaceans (Table 5). For species in which potential exposures have been calculated (dwarf sperm whale and pygmy sperm whale), the survey distance would cover over half of the PTS SEL range. Given operational constraints, surveying these larger areas would not be feasible.

Observers would consist of aircrew operating the C–26, S–61N, and C–130 aircraft from PMRF and the Coast Guard. These aircrew are trained and experienced at conducting aerial marine mammal surveys and have provided similar support for other missions at PMRF. Aerial surveys are typically conducted at an altitude of about 200 feet, but altitude may vary somewhat depending on sea state and atmospheric conditions. If adverse weather conditions preclude the ability for aircraft to safely operate, missions would either be delayed until the weather clears or cancelled for the day. For 2016 Long Range Strike WSEP missions, one day has been designated as a weather back-up day. The C–26 and other aircraft would generally be operated at a slightly higher altitude than the helicopter. The observers will be provided with the GPS location of the impact area. Once the aircraft reaches the impact area, pre-mission surveys typically last for 30 minutes, depending on the survey pattern. The fixed-wing aircraft are faster than the helicopter; and, therefore, protected species may be more difficult to spot. However, to compensate for the difference in speed, the aircraft may fly the survey pattern multiple times.

If a protected species is observed in the impact area, weapon release would be delayed until one of the following conditions is met: (1) The animal is observed exiting the impact area; (2) the animal is thought to have exited the impact area based on its course and speed; or (3) the impact area has been clear of any additional sightings for a period of 30 minutes. All weapons will be tracked and their water entry points will be documented.

Post-mission surveys would begin immediately after the mission is complete and the Range Safety Officer declares the human safety area is reopened. Approximate transit time from the perimeter of the human safety area to the weapon impact area would depend on the size of the human safety area and vary between aircraft but is expected to be less than 30 minutes. Post-mission surveys would be conducted by the same aircraft and aircrew that conducted the pre-mission surveys and would follow the same patterns as pre-mission surveys but would focus on the area down current of the weapon impact area to determine if protected species were affected by the mission (observation of dead or injured animals). If an injury or mortality occurs to a protected species due to LRS WSEP missions, NMFS would be notified immediately.

A typical mission day would consist of pre-mission checks, safety review, crew briefings, weather checks, clearing airspace, range clearance, mitigations/monitoring efforts, and other military protocols prior to launch of weapons. Potential delays could be the result of multiple factors including, but not limited to, adverse weather conditions leading to unsafe take-off, landing, and aircraft operations, inability to clear the range of non-mission vessels or aircraft, mechanical issues with mission aircraft or munitions, or presence of protected species in the impact area. If the mission is cancelled due to any of these, one back-up day has also been scheduled as a contingency. These standard operating procedures are usually done in the morning, and live range time may begin in late morning once all checks are complete and approval is granted from range control. The range would be closed to the public for a maximum of four hours per mission day.

Determination of the Zone of Influence: The zone of influence is defined as the area or volume of ocean in which marine mammals could be exposed to various pressure or acoustic energy levels caused by exploding ordnance. Refer to Appendix A of the application for a description of the method used to calculate impact areas for explosives. The pressure and energy levels considered to be of concern are defined in terms of metrics, criteria, and thresholds. A metric is a technical standard of measurement that describes the acoustic environment (*e.g.,* frequency duration, temporal pattern, and amplitude) and pressure at a given location. Criteria are the resulting types of possible impact and include mortality, injury, and harassment. A threshold is the level of pressure or noise above which the impact criteria are reached.

Standard impulsive and acoustic metrics were used for the analysis of underwater energy and pressure waves in this document. Several different metrics are important for understanding risk assessment analysis of impacts to marine mammals: SPL is the ratio of the absolute sound pressure to a reference level, SEL is measure of sound intensity and duration, and positive impulse is the time integral of the pressure over the initial positive phase of an arrival.

The criteria and thresholds used to estimate potential pressure and acoustic impacts to marine mammals resulting from detonations were obtained from Finneran and Jenkins (2012) and include mortality, injurious harassment (Level A), and non-injurious harassment (Level B). In some cases, separate thresholds have been developed for different species groups or functional hearing groups. Functional hearing groups included in the analysis are low-frequency cetaceans, mid-frequency cetaceans, high-frequency cetaceans, and phocids.

Based on the ranges presented in Table 5 and factoring operational limitations associated with the mission, 86 FWS estimates that during pre-mission surveys, the proposed monitoring area would be approximately 2 km (3.7 miles) from the target area radius around the impact point, with surveys typically flown in a star pattern, which is consistent with requirements already in place for similar actions at PMRF and encompasses the entire TTS threshold ranges (SEL) for mid-frequency cetaceans. For species in which potential exposures have been calculated (dwarf sperm whale and pygmy sperm whale), the survey distance would cover over half of the PTS SEL range. Given operational constraints, surveying these larger areas would not be feasible.

Post-Mission Monitoring

Post-mission monitoring determines the effectiveness of pre-mission mitigation by reporting sightings of any marine mammals. Post-mission monitoring surveys will commence once the mission has ended or, if required, as soon as personnel declare the mission area safe. Post-mission monitoring will be identical to pre-mission surveys and will occur approximately 30 minutes after the munitions have been detonated, concentrating on the area down-current of the test site. Observers will document and report any marine mammal species, number, location, and behavior of any animals observed.

We have carefully evaluated 86 FWS's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to stimuli that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to training exercises that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of 86 FWS's proposed measures, as well as other measures that may be relevant to the specified activity, we have preliminarily determined that the proposed mitigation measures, including visual aerial surveys and mission delays if protected species are observed in the impact area, provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance (while also considering personnel safety, practicality of implementation, and the impact of effectiveness of the military readiness activity).

Proposed Monitoring and Reporting

In order to issue an Authorization for an activity, section 101(a)(5)(D) of the MMPA states that we must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for an authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the proposed action area.

86 FWS submitted marine mammal monitoring and reporting measures in their IHA application. We may modify or supplement these measures based on comments or new information received from the public during the public comment period. Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) Affected species (*e.g.,* life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

NMFS proposes to include the following measures in the LRS WSEP Authorization (if issued). They are:

(1) 86 FWS will track the use of the PMRF for missions and protected species observations, through the use of mission reporting forms.

(2) 86 FWS will submit a summary report of marine mammal observations and LRS WSEP activities to the NMFS Pacific Islands Regional Office (PIRO) and the Office of Protected Resources 90 days after expiration of the current Authorization. This report must include the following information: (i) Date and time of each LRS WSEP exercise; (ii) a complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of LRS WSEP exercises on marine mammal populations; and (iii) results of the LRS WSEP exercise monitoring, including number of marine mammals (by species) that may have been harassed due to presence within the activity zone.

(3) 86 FWS will monitor for marine mammals in the proposed action area. If 86 FWS personnel observe or detect any dead or injured marine mammals prior to testing, or detects any injured or dead marine mammal during live fire exercises, 86 FWS must cease operations and submit a report to NMFS within 24 hours.

(4) 86 FWS must immediately report any unauthorized takes of marine mammals (*i.e.,* serious injury or mortality) to NMFS and to the respective Pacific Islands Region stranding network representative. 86 FWS must cease operations and submit a report to NMFS within 24 hours.

Estimated Numbers of Marine Mammals Taken by Harassment

The NDAA amended the definition of harassment as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

NMFS' analysis identified the physiological responses, and behavioral responses that could potentially result from exposure to explosive detonations. In this section, we will relate the potential effects to marine mammals from detonation of explosives to the MMPA regulatory definitions of Level A and Level B harassment. This section will also quantify the effects that might occur from the proposed military readiness activities in PMRF BSURE area.

86 FWS thresholds used for onset of temporary threshold shift (TTS; Level B Harassment) and onset of permanent threshold shift (PTS; Level A Harassment) are consistent with the thresholds outlined in the Navy's report titled, "Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis Technical Report," which the Navy coordinated with NMFS. NMFS believes that the thresholds outlined in the Navy's report represent the best available science. The report is available on the internet at: *http://nwtteis.com/Portals/NWTT/DraftEIS2014/SupportingDocs/NWTT_NMSDD_Technical_Report_23_January%202014_reduced.pdf.*

Level B Harassment

Of the potential effects described earlier in this document, the following are the types of effects that fall into the Level B harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the above definition, when resulting from exposures to non-impulsive or impulsive sound, is Level B harassment. Some of the lower level physiological stress responses discussed earlier would also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When predicting Level B harassment based on estimated behavioral responses, those takes may have a stress-related physiological component.

Temporary Threshold Shift—As discussed previously, TTS can affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. NMFS classifies TTS (when resulting from exposure to explosives and other impulsive sources) as Level B harassment, not Level A harassment (injury).

Level A Harassment

Of the potential effects that were described earlier, the following are the types of effects that fall into the Level A Harassment category:

Permanent Threshold Shift—PTS (resulting from exposure to explosive detonations) is irreversible and NMFS considers this to be an injury.

Table 4 outlines the explosive thresholds used by NMFS for this Authorization when addressing noise impacts from explosives.

Table 4. Explosive thresholds for Marine Mammals used by 86 FWS in its current acoustics impacts modeling.

Functional Hearing Group	Mortality*	Level A Harassment			Level B Harassment	
		Slight Lung Injury*	GI Tract Injury	PTS	TTS	Behavioral
LF Cetaceans	$91.4M^{1/3}\left(1+\frac{D}{10.1}\right)^{1/2}$	$39.1M^{1/3}\left(1+\frac{D}{10.1}\right)^{1/2}$	Unweighted SPL: 237 dB re 1 μPa	Weighted SEL: 187 dB re 1 $\mu Pa^2 \cdot s$	Weighted SEL: 172 dB re 1 $\mu Pa^2 \cdot s$	Weighted SEL: 167 dB re 1 $\mu Pa^2 \cdot s$
				Unweighted SPL: 230 dB re 1 μPa	Unweighted SPL: 224 dB re 1 μPa (23 psi PP)	
MF Cetaceans			Unweighted SPL: 237 dB re 1 μPa	Weighted SEL: 187 dB re 1 $\mu Pa^2 \cdot s$	Weighted SEL: 172 dB re 1 $\mu Pa^2 \cdot s$	Weighted SEL: 167 dB re 1 $\mu Pa^2 \cdot s$
				Unweighted SPL: 230 dB re 1 μPa	Unweighted SPL: 224 dB re 1 μPa (23 psi PP)	
HF Cetaceans			Unweighted SPL: 237 dB re 1 μPa	Weighted SEL: 161 dB re 1 $\mu Pa^2 \cdot s$	Weighted SEL: 146 dB re 1 $\mu Pa^2 \cdot s$	Weighted SEL: 141 dB re 1 $\mu Pa^2 \cdot s$
				Unweighted SPL: 201 dB re 1 μPa	Unweighted SPL: 195 dB re 1 μPa (1 psi PP)	
Phocids (in water)			Unweighted SPL: 237 dB re 1 μPa	Weighted SEL: 192 dB re 1 $\mu Pa^2 \cdot s$	Weighted SEL: 177 dB re 1 $\mu Pa^2 \cdot s$	Weighted SEL: 172 dB re 1 $\mu Pa^2 \cdot s$
				Unweighted SPL: 218 dB re 1 μPa	Unweighted SPL: 212 dB re 1 μPa (6 psi PP)	

M = Animal mass based on species (kilograms); D = Water depth (meters); dB re 1 μPa = decibels referenced to 1 microPascal; dB re 1 $\mu Pa^2 \cdot s$ = decibels reference to 1 microPascal-squared–seconds; GI = gastrointestinal; PTS = permanent threshold shift; SEL = sound exposure level; TTS = temporary threshold shift; SPL = sound pressure level; PP = peak pressure

*Expressed in terms of acoustic impulse (Pascal – seconds [Pa·s])

86 FWS completed acoustic modeling to determine the distances to NMFS's explosive thresholds from their explosive ordnance, which was then used with each species' density to determine number of exposure estimates. Below is a summary of those modeling efforts.

The maximum estimated range, or radius, from the detonation point to which the various thresholds extend for all munitions proposed to be released in a 24-hour time period was calculated based on explosive acoustic characteristics, sound propagation, and sound transmission loss in the Study Area, which incorporates water depth, sediment type, wind speed, bathymetry, and temperature/salinity profiles (Table 5). The ranges were used to calculate the total area (circle) of the zones of influence for each criterion/threshold. To eliminate "double-counting" of animals, impact areas from higher impact categories (*e.g.,* mortality) were subtracted from areas associated with lower impact categories (*e.g.,* Level A harassment). The estimated number of marine mammals potentially exposed to the various impact thresholds was then calculated as the product of the adjusted impact area, scaled animal density, and number of events. Since the model accumulates the energy from all detonations within a 24-hour timeframe, it is assumed that the same population of animals is being impacted within that time period. The population would refresh after 24 hours. In this case, only one mission day is planned for 2016, and therefore, only one event is modeled that would impact the same population of animals. Details of the acoustic modeling method are provided in Appendix A of the application.

The resulting total number of marine mammals potentially exposed to the various levels of thresholds is shown in Table 7. An animal is considered "exposed" to a sound if the received sound level at the animal's location is above the background ambient acoustic level within a similar frequency band. The exposure calculations from the model output resulted in decimal values, suggesting in most cases that a fraction of an animal was exposed. To eliminate this, the acoustic model results were rounded to the nearest whole animal to obtain the exposure estimates from 2016 missions. Furthermore, to eliminate "double-counting" of animals, exposure results from higher impact categories (*e.g.,* mortality) were subtracted from lower impact categories (*e.g.,* Level A harassment). For impact categories with multiple criteria and/or thresholds (*e.g.,* three criteria and four thresholds associated with Level A harassment), numbers in the table are based on the threshold resulting in the greatest number of exposures. These exposure estimates do not take into account the required mitigation and monitoring measures, which may decrease the potential for impacts.

TABLE 5—DISTANCES (m) TO EXPLOSIVE THRESHOLDS FROM 86 FWS'S EXPLOSIVE ORDNANCE

Species	Mortality [1]	Level A Harassment [2]				Level B Harassment		
		Slight lung injury	GI tract injury	PTS		TTS	Behavioral	
			237 dB SPL	Applicable SEL*	Applicable SPL*	Applicable SEL*	Applicable SPL*	Applicable SEL*
Humpback Whale	38	81	165	2,161	330	6,565	597	13,163
Blue Whale	28	59	165	2,161	330	6,565	597	13,163
Fin Whale	28	62	165	2,161	330	6,565	597	13,163
Sei Whale	38	83	165	2,161	330	6,565	597	13,163
Bryde's Whale	38	81	165	2,161	330	6,565	597	13,163
Minke Whale	55	118	165	2,161	330	6,565	597	13,163
Sperm Whale	33	72	165	753	330	3,198	597	4,206
Pygmy Sperm Whale	105	206	165	6,565	3,450	20,570	6,565	57,109
Dwarf Sperm Whale	121	232	165	6,565	3,450	20,570	6,565	57,109
Killer Whale	59	126	165	753	330	3,198	597	4,206
False Killer Whale	72	153	165	753	330	3,198	597	4,206
Pygmy Killer Whale	147	277	165	753	330	3,198	597	4,206
Short-finned Pilot Whale	91	186	165	753	330	3,198	597	4,206
Melon-headed Whale	121	228	165	753	330	3,198	597	4,206
Bottlenose Dolphin	121	232	165	753	330	3,198	597	4,206
Pantropical Spotted Dolphin	147	277	165	753	330	3,198	597	4,206
Striped Dolphin	147	277	165	753	330	3,198	597	4,206
Spinner Dolphin	147	277	165	753	330	3,198	597	4,206
Rough-toothed Dolphin	121	232	165	753	330	3,198	597	4,206
Fraser's Dolphin	110	216	165	753	330	3,198	597	4,206
Risso's Dolphin	85	175	165	753	330	3,198	597	4,206
Cuvier's Beaked Whale	51	110	165	753	330	3,198	597	4,206
Blainville's Beaked Whale	79	166	165	753	330	3,198	597	4,206
Longman's Beaked Whale	52	113	165	753	330	3,198	597	4,206
Hawaiian Monk Seal	135	256	165	1,452	1,107	3,871	1,881	6,565

[1] Based on Goertner (1982).

[2] Based on Richmond *et al.* (1973).

*Based on the applicable Functional Hearing Group.

Density Estimation

Density estimates for marine mammals were derived from the Navy's 2014 Marine Species Density Database (NMSDD). NMFS refers the reader to Section 3 of 86 FWS's application for detailed information on all equations used to calculate densities presented in Table 6.

TABLE 6—MARINE MAMMAL DENSITY ESTIMATES WITHIN 86 FWS'S PMRF

Species	Density (animals/km²)
Dwarf sperm whale	0.00714
Pygmy sperm whale	0.00291

Take Estimation

Table 7 indicates the modeled potential for lethality, injury, and non-injurious harassment (including behavioral harassment) to marine mammals in the absence of mitigation measures. 86 FWS and NMFS estimate that one marine mammal species could be exposed to injurious Level A harassment noise levels (187 dB SEL) and two species could be exposed to Level B harassment (TTS and Behavioral) noise levels in the absence of mitigation measures.

TABLE 7—MODELED NUMBER OF MARINE MAMMALS POTENTIALLY AFFECTED BY LRS WSEP OPERATIONS

Species	Mortality	Level A harassment (PTS only)	Level B harassment (TTS)	Level B harassment (behavioral)
Dwarf sperm whale	0	1	9	64
Pygmy sperm whale	0	0	3	26
TOTAL	0	1	12	90

Based on the mortality exposure estimates calculated by the acoustic model, zero marine mammals are expected to be affected by pressure levels associated with mortality or serious injury. Zero marine mammals are expected to be exposed to pressure levels associated with slight lung injury or gastrointestinal tract injury.

NMFS generally considers PTS to fall under the injury category (Level A Harassment). An animal would need to stay very close to the sound source for an extended amount of time to incur a serious degree of PTS, which could increase the probability of mortality. In this case, it would be highly unlikely for this scenario to unfold given the nature of any anticipated acoustic exposures that could potentially result from a mobile marine mammal that NMFS generally expects to exhibit avoidance behavior to loud sounds within the BSURE area.

NMFS has relied on the best available scientific information to support the issuance of 86 FWS's authorization. In the case of authorizing Level A harassment, NMFS has estimated that one dwarf sperm whale could, although unlikely, experience minor permanent threshold shifts of hearing sensitivity (PTS). The available data and analyses, as described more fully in this notice include extrapolation results of many studies on marine mammal noise-induced temporary threshold shifts of hearing sensitivities. An extensive review of TTS studies and experiments prompted NMFS to conclude that possibility of minor PTS in the form of slight upward shift of hearing threshold at certain frequency bands by one individual marine mammal is extremely low, but not unlikely.

Negligible Impact Analysis and Preliminary Determinations

NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, the discussion below applies to all the species listed in Table 7 for which we propose to authorize incidental take for 86 FWS's activities.

In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment;
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, 86 FWS's specified activities are not likely to cause long-term behavioral disturbance, serious injury, or death.

The takes from Level B harassment would be due to potential behavioral disturbance and TTS. The takes from Level A harassment would be due to potential PTS. Activities would only occur over a timeframe of one day in September, 2016.

Noise-induced threshold shifts (TS, which includes PTS) are defined as increases in the threshold of audibility (*i.e.,* the sound has to be louder to be detected) of the ear at a certain frequency or range of frequencies (ANSI 1995; Yost 2007). Several important factors relate to the magnitude of TS, such as level, duration, spectral content (frequency range), and temporal pattern (continuous, intermittent) of exposure (Yost 2007; Henderson *et al.,* 2008). TS occurs in terms of frequency range (Hz or kHz), hearing threshold level (dB), or both frequency and hearing threshold level.

In addition, there are different degrees of PTS: Ranging from slight/mild to moderate and from severe to profound. Profound PTS or the complete loss of the ability to hear in one or both ears is commonly referred to as deafness. High-frequency PTS, presumably as a normal process of aging that occurs in humans and other terrestrial mammals, has also been demonstrated in captive cetaceans (Ridgway and Carder, 1997; Yuen *et al.* 2005; Finneran *et al.,* 2005; Houser and Finneran, 2006; Finneran *et al.,* 2007; Schlundt *et al.,* 2011) and in stranded individuals (Mann *et al.,* 2010).

In terms of what is analyzed for the potential PTS (Level A harassment) in one marine mammal as a result of 86 FWS's LRS WSEP operations, if it occurs, NMFS has determined that the levels would be slight/mild because research shows that most cetaceans show relatively high levels of avoidance. Further, it is uncommon to sight marine mammals within the target area, especially for prolonged durations. Avoidance varies among individuals and depends on their activities or reasons for being in the area.

NMFS' predicted estimates for Level A harassment take (Table 7) are likely overestimates of the likely injury that will occur. NMFS expects that successful implementation of the required aerial-based mitigation measures could avoid Level A take. Also, NMFS expects that some individuals would avoid the source at levels expected to result in injury. Nonetheless, although NMFS expects that Level A harassment is unlikely to occur at the numbers proposed to be authorized, because it is difficult to quantify the degree to which the mitigation and avoidance will reduce the number of animals that might incur PTS, we are proposing to authorize (and analyze) the modeled number of Level A takes (one), which does not take the mitigation or avoidance into consideration. However, we anticipate that any PTS incurred because of mitigation and the likely short duration of exposures, would be in the form of only a small degree of permanent threshold shift and not total deafness.

While animals may be impacted in the immediate vicinity of the activity, because of the short duration of the actual individual explosions themselves (versus continual sound source operation) combined with the short duration of the LRS WSEP operations, NMFS has preliminarily determined that there will not be a substantial impact on marine mammals or on the normal functioning of the nearshore or offshore waters off Kauai and its ecosystems. We do not expect that the proposed activity would impact rates of recruitment or survival of marine mammals since we do not expect mortality (which would remove individuals from the population) or serious injury to occur. In addition, the proposed activity would not occur in areas (and/or times) of significance for the marine mammal populations potentially affected by the exercises (*e.g.,* feeding or resting areas, reproductive areas), and the activities would only occur in a small part of their overall range, so the impact of any potential temporary displacement would be negligible and animals would be expected to return to the area after the cessations of activities. Although the proposed activity could result in Level A (PTS only, not slight lung injury or gastrointestinal tract injury) and Level B (behavioral disturbance and TTS) harassment of marine mammals, the level of harassment is not anticipated to impact rates of recruitment or survival of marine mammals because the number of exposed animals is expected to be low due to the short-term (*i.e.,* four hours a day or less on one day) and site-specific nature of the activity. We do not anticipate that the effects would be detrimental to rates of recruitment and survival because we do not expect serious of extended behavioral responses that would result in energetic effects at the level to impact fitness.

Moreover, the mitigation and monitoring measures proposed for the IHA (described earlier in this document) are expected to further minimize the potential for harassment. The protected species surveys would require 86 FWS to search the area for marine mammals, and if any are found in the impact zone, then the exercise would be suspended until the animal(s) has left the area or relocated outside of the zone. Furthermore, LRS WSEP missions may be delayed or rescheduled for adverse weather conditions.

Based on the preliminary analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that 86 FWS's LRS WSEP operations will result in the incidental take of marine mammals, by Level A and Level B harassment only, and that the taking from the LRS WSEP exercises will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In 2015, 86 FWS provided NMFS with an EA titled, Environmental Assessment/Overseas Environmental Assessment for the Long Range Strick Weapon Systems Evaluation Program Operational Evaluations. The EA analyzed the direct, indirect, and cumulative environmental impacts of the specified activities on marine mammals. NMFS will review and evaluate the 86 FWS EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, and determine whether or not to adopt it. Information in 86 FWS's application, EA, and this notice collectively provide the environmental information related to proposed issuance of the IHA for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the IHA request. The 2016 NEPA documents are available for review at *www.nmfs.noaa.gov/pr/permits/incidental/military.html.*

Proposed Authorization

As a result of these preliminary determinations, we propose to issue an IHA to 86 FWS for conducting LRS WSEP activities, for a period of one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed Authorization language is provided in the next section. The wording contained in this section is proposed for inclusion in the Authorization (if issued).

1. This Authorization is valid for a period of one year from the date of issuance.

2. This Authorization is valid only for activities associated with the LRS WSEP operations utilizing munitions identified in the Attachment.

3. The incidental taking, by Level A and Level B harassment, is limited to: Dwarf sperm whale (*Kogia sima*) and Pygmy sperm whale (*Kogia breviceps*) as specified in Table 1 of this notice.

TABLE 1—AUTHORIZED TAKE NUMBERS.

Species	Level A takes	Level B takes
Dwarf sperm whale	1	73
Pygmy sperm whale	0	29
Total	1	102

The taking by serious injury or death of these species, the taking of these species in violation of the conditions of this Incidental Harassment Authorization, or the taking by harassment, serious injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of this Authorization.

4. Mitigation

When conducting this activity, the following mitigation measures must be undertaken:

- If daytime weather and/or sea conditions preclude adequate monitoring for detecting marine mammals and other marine life, LRS WSEP strike operations must be delayed until adequate sea conditions exist for monitoring to be undertaken.
- On the morning of the LRS WSEP strike mission, the test director and safety officer will confirm that there are no issues that would preclude mission execution and that the weather is adequate to support monitoring and mitigation measures.
- If post-mission surveys determine that an injury or lethal take of a marine mammal has occurred, the next mission will be suspended until the test procedure and the monitoring methods have been reviewed with NMFS and appropriate changes made.

5. Monitoring

The holder of this Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

The holder of this Authorization will track their use of the PMRF BSURE area for the LRS WSEP missions and marine mammal observations, through the use of mission reporting forms.

Aerial surveys: Pre- and post- mission will be conducted. Pre-mission surveys would begin approximately one hour prior to detonation. Post-detonation monitoring surveys will commence once the mission has ended or, if required, as soon as personnel declare the mission area safe.

Proposed monitoring area would be approximately 2 km (3.7 miles) from the target area radius around the impact point, with surveys typically flown in a star pattern. Aerial surveys would be conducted at an altitude of about 200 feet, but altitude may vary somewhat depending on sea state and atmospheric conditions. If adverse weather conditions preclude the ability for aircraft to safely operate, missions would either be delayed until the weather clears or cancelled for the day. The observers will be provided with the GPS location of the impact area. Once the aircraft reaches the impact area, pre-mission surveys typically last for 30 minutes, depending on the survey pattern. The aircraft may fly the survey pattern multiple times.

6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent IHA for projects at PMRF, whichever comes first. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*), and shall also include:

1. Date and time of each LRS WSEP mission;
2. A complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of LRS WSEP missions on marine mammal populations; and
3. Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the LRS WSEP mission and number of marine mammals (by species if possible) that may have been harassed due to presence within the zone of influence.

The draft report will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final report prior to acceptance by the National Marine Fisheries Service. The draft report will be considered the final report for this activity under this Authorization if the National Marine Fisheries Service has not provided comments and recommendations within 90 days of receipt of the draft report.

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury for species not authorized (Level A harassment), serious injury, or mortality, 86 FWS shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Pacific Islands Regional Stranding Coordinator, NMFS. The report must include the following information:

A. Time and date of the incident;
B. Description of the incident;
C. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);
D. Description of all marine mammal observations in the 24 hours preceding the incident;
E. Species identification or description of the animal(s) involved;
F. Fate of the animal(s); and
G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with 86 FWS to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. 86 FWS may not resume their activities until notified by NMFS.

ii. In the event that 86 FWS discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), 86 FWS shall immediately report the incident to the Office of Protected Resources, NMFS, and the Pacific Islands Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with 86 FWS to determine whether additional mitigation measures or modifications to the activities are appropriate.

iii. In the event that 86 FWS discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), 86 FWS shall report the incident to the Office of Protected Resources, NMFS, and the Pacific Islands Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. 86 FWS shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. Additional Conditions

- The holder of this Authorization must inform the Director, Office of Protected Resources, National Marine Fisheries Service, (301–427–8400) or designee (301–427–8401) prior to the initiation of any changes to the monitoring plan for a specified mission activity.
- A copy of this Authorization must be in the possession of the safety officer on duty each day that long range strike missions are conducted.
- This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analysis, the draft authorization, and any other aspect of this **Federal Register** notice of proposed Authorization. Please include with your comments any supporting data or literature citations to help inform our final decision on 86 FWS's renewal request for an MMPA authorization.

Dated: July 1, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–16114 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE461

Marine Mammals; Pinniped Removal Authority; Approval of Application

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce (NOAA).

ACTION: Notice of availability.

SUMMARY: NMFS announces approval of an application for a Letter of Authorization (LOA) from the states of Oregon, Washington, and Idaho for lethal removal of individually identifiable predatory California sea lions (*Zalophus californianus*) in the vicinity of Bonneville Dam to minimize pinniped predation on Pacific salmon and steelhead (*Oncorhynchus spp.)* listed as threatened or endangered under the Endangered Species Act (ESA) in the Columbia River in Washington and Oregon. This authorization is pursuant to the Marine Mammal Protection Act (MMPA). NMFS also announces availability of decision documents and other information relied upon in making this determination.

ADDRESSES: Additional information about our determination may be obtained by visiting the NMFS West Coast Region's Web site: *http://www.westcoast.fisheries.noaa.gov,* or by writing to us at: NMFS West Coast Region, Protected Resources Division, 1201 Lloyd Blvd., Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson at the above address, by phone at (503) 231–2226, or by email at *robert.c.anderson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 120 of the MMPA (16 U.S.C. 1361, *et seq.*) allows the Secretary of Commerce, acting through the Assistant Administrator for Fisheries, and the West Coast Regional Administrator of NMFS, the discretion to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on salmonids that are either: (1) Listed under the ESA, (2) approaching a threatened or endangered status, or (3) migrate through the Ballard Locks in Seattle. The authorization applies only to pinnipeds that are not: (1) Listed under the ESA, (2) designated as depleted, or (3) designated a strategic stock.

In December 2006, NMFS received an application from the Idaho Department of Fish and Game, Oregon Department of Fish and Wildlife, and the Washington Department of Fish and Wildlife (collectively referred to as the States) requesting authorization under section 120 of the MMPA to intentionally take, by lethal methods, individually identifiable predatory California sea lions in the Columbia River, which were then having a significant negative impact on the recovery of threatened and endangered Pacific salmon and steelhead. As required under the MMPA, NMFS convened a Pinniped-Fishery Interaction Task Force (Task Force). The role of the Task Force is to recommend to NMFS approval or denial of the States' application along with recommendations of the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority. The Task Force must also suggest non-lethal alternatives, if available and practicable, including a recommended course of action. NMFS partially approved the States' 2006 request, issuing a LOA on March 17, 2008, and on March 24, 2008, NMFS published a notice in the **Federal Register** (73 FR 15483).

Shortly after NMFS issued the LOA, the Humane Society of the United States (HSUS) filed a lawsuit in the U.S. District Court in Oregon, alleging that NMFS' LOA violated section 120 of the MMPA and the National Environmental Policy Act (NEPA). In November 2008, the district court issued an order upholding NMFS' approval of the lethal removal program and its evaluation of impacts under NEPA. Plaintiffs appealed to the Ninth Circuit Court of Appeals which declined to halt the removal program while the appeal was pending. Subsequently, the Ninth Circuit vacated and remanded the LOA to NMFS in November 2010 (*Humane Society of the United States, et al.* v. *Locke,* 626 F.3d 1040 (9th Cir. 2010)). In response to the Ninth Circuit Court's 2010 decision, the States submitted a new request for lethal removal authorization on December 7, 2010. NMFS considered the request and new information available since its prior authorization, including the Task Force's recommendations. NMFS again authorized lethal take, under similar conditions to the 2008 authorization (albeit with modifications), issuing a new LOA on May 13, 2011. HSUS again filed suit this time in federal court for the District of Columbia, alleging, among other things, that NMFS had not followed procedural requirements under MMPA section 120 prior to issuing the new authorization (including public notice and comment on the States' application). In coordination with the States, NMFS revoked the May 13, 2011, authorization on July 22, 2011, and HSUS voluntarily withdrew their lawsuit.

On August 18, 2011, the States submitted a new request for lethal removal of California sea lions at Bonneville Dam under substantially the same conditions as the prior authorizations. On March 15, 2012, NMFS issued a LOA to the States. In renewed litigation by HSUS this LOA was upheld in district court on February 15, 2013, and later affirmed by the Ninth Circuit Court of Appeals (*Humane Society of the US* v. *Bryson,* 924 F.Supp.2d 1228 (D. Or., 2013); *HSUS* v. *Pritzker,* No. 13–35195 (9th Cir., 9/27/13)). The 2012 LOA expires on June 30, 2016.

On January 27, 2016, NMFS received an application from the States to extend the 2012 LOA through June 30, 2021. The States are not requesting any changes or modifications to the terms and conditions of the 2012 LOA. Pursuant to the MMPA, NMFS determined that the application contains sufficient information to warrant convening the Task Force. On March 28, 2016, NMFS published a notice in the **Federal Register** (81 FR 17141), announcing receipt of the States' application, and soliciting public comments on the application and any additional information that NMFS should consider in making its decision. On May 31, 2016, NMFS reconvened the Task Force at a meeting that was open to the public, during which it reviewed the States' application, public comments on the application, and other information related to sea lion predation on salmonids at Bonneville Dam. The Task Force completed and submitted its report to NMFS on June 22, 2016. Thirteen of the fourteen members recommended that NMFS approve the States' extension request, with one member dissenting. All decision documents, including a copy of the new LOA, are available on NMFS's West Coast Region Web page (see **ADDRESSES**).

Findings

As required under section 7(a)(2) under the ESA, NMFS completed formal consultation, and in accordance with NEPA, NMFS completed a supplemental environmental assessment (EA) to the 2008 EA with a finding of no significant impact. In considering a state's application to lethally remove pinnipeds, NMFS is also required, pursuant to section 120(b)(1) of the MMPA, to determine that individually identifiable pinnipeds are having a significant negative impact on the decline or recovery of at-risk salmonid fishery stocks. Based on these requirements, considerations, and analyses, NMFS has determined that the requirements of section 120 of the MMPA have been met and it is therefore reasonable to issue a new LOA to the States for the lethal removal of individually identifiable predatory California sea lions through 2021.

Dated: June 30, 2016.

Nicole R. LeBoeuf,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–16006 Filed 7–6–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2014–0044]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Exchange Accounts Receivable Files; Exchange Form 6450–002 "Military Star Card Application, Exchange Form 6450–005 "Exchange

Credit Program''; OMB Control Number 0702–XXXX.

Type of Request: Existing collection in use without an OMB Control Number.

Number of Respondents: 200,455.

Responses per Respondent: 1.

Annual Responses: 200,455.

Average Burden per Response: 3 minutes.

Annual Burden Hours: 9,948 hours.

Needs and Uses: The information collection requirement is necessary to process, monitor, and post audit accounts receivables to the Army and Air Force Exchange Service; to administer the Federal Claims Collection act and to answer inquiries pertaining thereto as well as collection of indebtedness and determination of customer's eligibility to cash checks at Exchange facilities.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 1, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–16107 Filed 7–6–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the United States Military Academy Board of Visitors (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed pursuant to 10 U.S.C. 4355 and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a). The charter and contact information for the Board's Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/.*

The Board provides independent advice and recommendations to the President of the United States on the state of morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the United States Military Academy that the Board decides to consider. The Board is composed of 15 members: (a) The Chair of the Senate Committee on Armed Services, or designee; (b) Three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Senate Committee on Appropriations; (c) The Chair of the House Committee on Armed Services, or designee; (d) Four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the House Committee on Appropriations; and (e) Six persons designated by the President. Board members who are full-time or permanent part-time Federal officers or employees are appointed as regular government employee members pursuant to 41 CFR 102–3.130(a), whereas, Board members who are not full-time or permanent part-time Federal officers or employees are appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee (SGE) members. The DoD, as necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Board and must report all recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Board's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD officer or employee, and is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting. The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Board. All written statements must be submitted to the Board's DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: July 1, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–16119 Filed 7–6–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 27, 2016, 1:00 p.m.–5:15 p.m.

ADDRESSES: Santa Fe Community College, Jemez Complex, 6401 Richards Avenue, Santa Fe, New Mexico 87508.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Call to Order
- Welcome and Introductions
- Approval of Agenda and Meeting Minutes of May 18, 2016
- Old Business
- New Business
- Update from Co-Deputy Designated Federal Officers
- Pre-Solicitation Request for Proposals
- Presentation: Waste Isolation Pilot Plant (WIPP) Recovery
- Presentation: Lifecycle Baseline
- Public Comment Period
- Updates from EM Los Alamos Field Office and New Mexico Environment Department
- Wrap-Up Comments from NNMCAB Members
- Adjourn

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://energy.gov/em/nnmcab/northern-new-mexico-citizens-advisory-board.*

Issued at Washington, DC on June 30, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–16072 Filed 7–6–16; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, July 25, 2016, 1:00 p.m.–5:00 p.m.

Tuesday, July 26, 2016, 8:30 a.m.–5:00 p.m.

ADDRESSES: New Ellenton Community Center, 212 Pine Hill Avenue, New Ellenton, South Carolina 29809.

FOR FURTHER INFORMATION CONTACT: James Giusti, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7684.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, July 25, 2016

Opening and Agenda Review
Work Plan Update
Combined Committees Session
Order of committees

- Administrative & Outreach
- Facilities Disposition & Site Remediation
- Strategic & Legacy Management
- Waste Management
- Nuclear Materials

Public Comments
Adjourn

Tuesday, July 26, 2016

Opening, Minutes, Chair Update, and Agenda Review
Agency Updates
Public Comments
Break
Administrative & Outreach Committee Update
Facilities Disposition & Site Remediation Committee Update
Lunch Break
Facilities Disposition & Site Remediation Committee Update (Continued)
Waste Management Committee Update
Strategic & Legacy Management Committee Update
Public Comments
Break
Nuclear Materials Committee Update
Public Comments
Adjourn

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Giusti at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact James Giusti's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling James Giusti at the address or phone number listed above. Minutes will also be available at the following Web site: *http://cab.srs.gov/srs-cab.html.*

Issued at Washington, DC, on July 1, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–16096 Filed 7–6–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2016; FRL–9948–79–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club: *Sierra Club* v. *EPA,* No. 15–cv–01555 (D.D.C.). In 2012, EPA issued two rules disapproving certain aspects of a state implementation plan (SIP) submitted by Louisiana to address regional haze. In their lawsuit, Sierra Club alleges that EPA has failed to meet the requirement of the CAA that the Agency promulgate a federal implementation plan (FIP) within two years of disapproving a SIP, in whole or in part. The proposed consent decree establishes deadlines for EPA to take certain actions to meet its CAA obligations with respect to Louisiana's regional haze SIP.

DATES: Written comments on the proposed consent decree must be received by August 8, 2016.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2016–0363, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Matthew C. Marks, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–3276; fax number (202) 564–5603; email address: *marks.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

In 2012, EPA disapproved certain aspects of Louisiana's regional haze SIP 77 FR 33642 (June 7, 2012); 77 FR 39425 (July 3, 2012). When EPA disapproves a SIP submission in whole or in part, section 110(c) of the Act requires EPA to promulgate a FIP within two years unless the State corrects the deficiency and EPA approves the plan revision. The proposed consent decree would resolve the lawsuit filed by Sierra Club by requiring EPA to take certain actions by March 31, 2017 and December 15, 2017. See the proposed consent decree for details.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2016–0363) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 28, 2016.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2016–16143 Filed 7–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9948–82–OECA]

Production of Confidential Business Information in Pending Enforcement Litigation; Transfer of Information Claimed as Confidential Business Information to the United States Department of Justice and Parties to Certain Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency ("EPA") is providing notice of disclosure in civil enforcement litigation against Navistar International Corp. and Navistar, Inc. pursuant to 40 CFR 2.209(d). In response to discovery requests received by the United States in the litigation styled, *United States of America* v. *Navistar International Corp., and Navistar, Inc.,* Case No. 15–cv–6143, pending in the United States District Court for the Northern District of Illinois (the "Navistar Litigation"), the United States Department of Justice ("DOJ") is disclosing information which has been submitted to EPA by vehicle and engine manufacturers that is claimed to be, or has been determined to be, potential confidential business information (collectively "CBI"). The use of the CBI is limited to the Navistar Litigation and its distribution is restricted by terms of a Court confidentiality order.

DATES: Access by DOJ and/or the parties to the Navistar Litigation to material, including CBI, discussed in this document, is ongoing and expected to continue during the Navistar Litigation.

FOR FURTHER INFORMATION CONTACT: Edward Kulschinsky, Air Enforcement Division, Office of Civil Enforcement (2242A); telephone number: 202–564–4133; fax number: 202–564–0069; email address: *kulschinsky.edward@epa.gov.*

SUPPLEMENTARY INFORMATION: The United States has initiated a civil enforcement action alleging that Navistar International Corp. and Navistar, Inc., violated Title II of the Clean Air Act in connection with the production and sale of on-highway heavy-duty diesel engines in calendar years 2009 and 2010. This notice is being provided, pursuant to 40 CFR 2.209(d), to inform affected businesses that EPA intends to transmit certain information, which has been submitted by vehicle and engine manufacturers that is claimed to be, or has been determined to be, potential confidential business information (collectively "CBI"), to defendants in this enforcement action. The information includes EPA communications with, and information provided by, vehicle and engine manufacturers in connection with the certification of heavy-duty diesel motor vehicle engines or non-road engines, some of which may include CBI.

The parties to the Navistar Litigation have entered into an Agreed Confidentiality Order, *see* Case No. 15–cv–6143, ECF Document No. 35 in the Navistar Litigation docket, filed December 15, 2015, (the "Confidentiality Order"), that governs the treatment of information, including CBI, that is designated "Confidential" pursuant to the Confidentiality Order. The Confidentiality Order provides for limited disclosure and use of CBI and for the return or destruction of CBI at the conclusion of the litigation. In accordance with 40 CFR 2.209(c)–(d), DOJ must disclose such information to the extent required to comply with the discovery obligations of the United States in the Navistar Litigation, including its obligations under the Confidentiality Order.

Dated: June 30, 2016.

Phillip A. Brooks,

Director, Air Enforcement Division.

[FR Doc. 2016–16144 Filed 7–6–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9948–80–OECA]

National Environmental Justice Advisory Council; Notification of Public Teleconference and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering to attend the meeting or to provide public comment, please see "Registration" under **SUPPLEMENTARY INFORMATION**. Due to a limited number of telephone lines, attendance will be on a first-come, first served basis. Pre-registration is required.

DATES: The NEJAC will host a public teleconference meeting on Wednesday, July 20, 2016, at 3:00 p.m. Eastern Time. The topics of discussion will include: (1) Water infrastructure financing in vulnerable and overburdened communities and (2) the implementation and outreach of EPA's Revised Agricultural Worker Protection Regulation. Public comment period relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Wednesday, July 20, 2016 starting at 5:00 p.m. Eastern Time. Members of the public who wish to participate during the public comment period are highly encouraged to pre-register by 11:59 p.m., Eastern Time, on Monday, July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the teleconference meeting should be directed to Karen L. Martin, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., (MC2201A), Washington, DC 20460; by telephone at 202–564–0203; via email at *martin.karenl@epa.gov;* or by fax at 202–564–1624. Additional information about the NEJAC is available at: *www.epa.gov/environmentaljustice/nejac.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee "will provide independent advice and recommendations to the Administrator about broad, crosscutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice."

Registration

Registrations for the July 20, 2016, pubic teleconference will be processed *http://nejac-teleconference-july-20-2016.eventbrite.com.* Pre-registration is required. Registration for the July 20, 2016, teleconference meeting closes at 11:59 p.m., Eastern Time on Monday, July 18, 2016. The deadline to sign up to speak during the public comment period, or to submit written public comments, is also 11:59 p.m., Eastern

Time Monday, July 18, 2016. When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also state whether you would like to be put on the list to provide public comment, and whether you are submitting written comments before the Monday, July 18, 2016, 11:59 p.m. Due to a limited number of telephone lines, attendance will be on a first-come, first served basis.

Public Comment

Individuals or groups making remarks during the public comment period will be limited to seven (7) minutes. To accommodate the number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by registration deadline, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Karen L. Martin, EPA, via email at *martin.karenl@epa.gov.*

Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Karen L. Martin, at (202) 564–0203 or via email at *martin.karenl@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least seven (7) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: June 28, 2016.

Matthew Tejada,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. 2016–16129 Filed 7–6–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011426–062.

Title: West Coast of South America Discussion Agreement.

Parties: CMA CGM S.A.; Hamburg-Süd; Mediterranean Shipping Company, SA; and Seaboard Marine Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 Nineteenth Street NW.; Washington, DC 20036.

Synopsis: The amendment deletes Hapag-Lloyd as a party to the Agreement, and reflects the recent resignation of Trinity Shipping Line as a party to the Agreement.

Agreement No.: 012109–001.

Title: CSAV/Hoegh Autoliners Mexico/USA Space Charter Agreement.

Parties: Compania Sud Americana De Vapores S.A. and Hoegh Autoliners AS.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW.; Washington, DC 20036.

Synopsis: The amendment adds Colombia, Ecuador, Peru, and Chile to the geographic scope of the Agreement, corrects the addresses of the Parties, and adds a new Article 11 to the Agreement.

Agreement No.: 012200–003.

Title: G6/Zim Transpacific Vessel Sharing Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte, Ltd. (Operating as one Party); Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Limited.; and Zim Integrated Shipping Services Limited.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW.; Washington, DC 20036.

Synopsis: The amendment deletes existing authority for the parties to engage in slot exchanges between the joint strings operated under the Agreement, and other G6 service strings.

Agreement No.: 012422.

Title: Liberty Global Logistics/NYK Space Charter Agreement.

Parties: Liberty Global Logistics, LLC and Nippon Yusen Kaisha.

Filing Party: Kristen Chung, Corporate Counsel, NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The Agreement would authorize the parties to share vessels and vessel space for the carriage of ro/ro cargo in the trades between ports and places in the United States and ports or places in a foreign country.

Agreement No.: 012423.

Title: Glovis/NYK Space Charter Agreement.

Parties: Hyundai Glovis Co. Ltd. and Nippon Yusen Kaisha.

Filing Party: Kristen Chung, Corporate Counsel, NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The Agreement would authorize the parties to share vessels and vessel space for the carriage of ro/ro cargo in the trades between ports and places in the United States and ports or places in a foreign country.

Agreement No.: 201178–001.

Title: Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement.

Parties: The West Coast MTO Agreement and its individual marine terminal operator members; The City of Los Angeles, acting by and through its Board of Harbor Commissioners; and The City of Long Beach, acting by and through its Board of Harbor Commissioners.

Filing Party: David F. Smith, Esq.; Cozen O'Conner; 1200 Nineteenth Street NW.; Washington, DC 20036.

Synopsis: The amendment would add authority for the Parties to discuss issues relating to congestion and port and terminal efficiency.

By Order of the Federal Maritime Commission.

Dated: June 30, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–16011 Filed 7–6–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MARITIME COMMISSION

[Docket No. 16–14]

T. Parker Host, Inc. v. Kinder Morgan Liquids Terminals, LLC, et al.: Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by T. Parker Host, Inc., hereinafter "Complainant," against Kinder Morgan Liquids Terminals, LLC, Kinder Morgan Bulk

Terminals, Inc., Kinder Morgan Services, LLC, Kinder Morgan Southeast Terminals, LLC, Kinder Morgan Virginia Liquids Terminals LLC, Kinder Morgan Materials Services, LLC, Kinder Morgan G.P., Inc., Kinder Morgan Operating L.P. "A", Kinder Morgan Operating L.P. "C", Kinder Morgan Operating L.P. "D", Kinder Morgan Transmix Company LLC, Kinder Morgan Energy Partners, Nassau Terminals, LLC, Kinder Morgan Terminals, and Kinder Morgan, Inc., hereinafter "Respondents." Complainant states that it is a business engaged in providing ship's agency services to vessel owners, operators and charterers. Complainant alleges that Respondents are operators of marine terminals.

Complainant alleges that by banning Complainant from entering on or coordinating port calls at all marine terminals owned or operated by Respondents, as well as informing Complainant's customers that as of July 1, 2016 Complainant has been banned from coordinating port calls at all marine terminals owned or operated by Respondents, Respondents have violated the Shipping Act, 46 U.S.C. 41106, which states that marine terminal operators "may not give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person; or unreasonably refuse to deal or negotiate."

Complainant requests that the Commission enter an order declaring the "Blacklist Notice" and/or Respondents' actions described in their complaint violate 46 U.S.C. 41106 and are unlawful and unenforceable, and further declaring that Complainant may continue to provide vessel agency services at Respondents' terminals as it currently does, and that Respondent be required to answer the charges made in the Complaint. Complainant also requests that after taking evidence and conducting a hearing, the Commission order Respondents to cease and desist from violation of the Shipping Act; to put in place lawful and reasonable practices to insure no continuing similar violations of the Shipping Act; to pay Complainant's reasonable attorney fees pursuant to 46 U.S.C. 41305(e); to pay monetary penalties for violating the Shipping Act pursuant to 46 U.S.C. 41107; and that the Commission make any further orders as it determines to be just and proper.

The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/16-14.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by June 29, 2017, and the final decision of the Commission shall be issued by January 12, 2018.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–16012 Filed 7–6–16; 8:45 am]

BILLING CODE 6731–AA–P

GENERAL SERVICES ADMINISTRATION

[Notice–FAS–2016–01; Docket No. 2016–0001; Sequence 15]

Seeking Input on the Public Release of Data Collected Through Transactional Data Reporting

AGENCY: Federal Acquisition Service (FAS), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: FAS is publishing this notice to solicit comments regarding the public release of transactional data reported in accordance with the General Services Administration Acquisition Regulation (GSAR) Transactional Data Reporting clauses. GSA FAS will consider comments received in establishing its final position on which Transactional Data Reporting (TDR) data elements are releasable under the Freedom of Information Act (FOIA) and which elements will therefore be released to the general public via a public data extract.

DATES: Submit comments on or before August 29, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Jones, Procurement Analyst, FAS Office of Acquisition Management, at *adam.jones@gsa.gov,* or 571–289–0164.

ADDRESSES: Submit comments identified by "Notice FAS–2016–01; Seeking Input on the Public Release of Data Collected Through Transactional Data Reporting" by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Notice FAS–2016–01; Seeking Input on the Public Release of Data Collected through Transactional Data Reporting" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "submit a Comment" that corresponds with "Notice FAS–2016–01; Seeking Input on the Public Release of Data Collected Through Transactional Data Reporting". Following the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Notice FAS–2016–01; Seeking Input on the Public Release of Data Collected Through Transactional Data Reporting" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/Notice FAS–2016–01; Seeking Input on the Public Release of Data Collected Through Transactional Data Reporting.

Instructions: Please submit comments only and cite Notice FAS–2016–01; Seeking Input on the Public Release of Data Collected Through Transactional Data Reporting, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

SUPPLEMENTARY INFORMATION:

A. Background: GSA published the Transactional Data Reporting final rule in the **Federal Register** at 81 FR 41103 on June 23, 2016. The rule amended the General Services Administration Acquisition Regulation (GSAR) to include clauses that require vendors to report transactional data from orders placed against select Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition Contracts (GWACs), and Governmentwide Indefinite-Delivery, Indefinite-Quantity (IDIQ) contracts. The clause applicable to GWACs and Governmentwide IDIQs, GSAR clause 552.216–75, will be applied to new contracts in that class and may be applied to any existing contracts in this class that do not contain other transactional data clauses. For FSS contracts, the clause (GSAR clause 552.238–74 Alternate I) will be introduced in phases, beginning with a pilot for select Schedules or Special Item Numbers and will be paired with changes to existing requirements for Commercial Sales Practices disclosures and Price Reductions clause basis of award monitoring. The final rule does not apply to the Department of Veterans Affairs (VA) FSS contract holders.[1]

Contractors subject to Transactional Data Reporting will be required to report eleven standard data elements. Any data elements beyond the standard elements must be coordinated with the applicable category manager, and approved by the Head of Contracting Activity and GSA's Senior Procurement Executive in order for them to be included with a tailored version of the applicable clause. The determination regarding additional data elements will consider the benefits, alternatives, burden, and need for additional rulemaking.

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[1] *See* GSAR Case 2013–G504; Docket 2014–0020; Sequence 1 (80 FR 11619 (Mar. 4, 2015)).

GSA intends to share transactional data to the maximum extent allowable to promote transparency and competition while respecting that some data could be exempt from disclosure. Accordingly, a public data extract, containing information that would otherwise be releasable under the Freedom of Information Act (FOIA) (*5 U.S.C. 552*), will be created for use by the general public.

The data released to the public will provide valuable market intelligence that can be used by vendors for crafting more efficient, targeted business development strategies that incur lower administrative costs. This will be particularly beneficial for small businesses, which often do not have the resources to invest in dedicated business development staff or acquire business intelligence through third-parties.

B. Standard Data Elements: Both Transactional Data Reporting GSAR clauses 552.238–74, Alternate I and 552.216–75 require contractors to report the same eleven standard data elements. These data elements, along with their exemption status under FOIA, are listed in the table below.

Data element description	Exemption status
1. Contract or Blanket Purchase Agreement (BPA) Number	Not exempt under FOIA.
2. Delivery/Task Order Number/Procurement Instrument Identifier (PIID)	Not exempt under FOIA.
3. Non Federal Entity	Not exempt under FOIA.
4. Description of Deliverable	Not exempt under FOIA.
5. Manufacturer Name	Not exempt under FOIA.
6. Manufacturer Part Number	Not exempt under FOIA.
7. Unit Measure (each, hour, case, lot)	Not exempt under FOIA.
8. Quantity of Item Sold	Exempt—5 U.S.C. 552(b)(4).[2]
9. Universal Product Code	Not exempt under FOIA.
10. Price Paid Per Unit	Exempt—5 U.S.C. 552(b)(4).
11. Total Price	Not exempt under FOIA.

As described in Section A, GSA intends to share transactional data elements that are not exempt under the FOIA with the general public through a public data extract.

C. Public Comments: Public comments are invited on the FOIA exemption status of the eleven standard data elements identified in Section B. Comments must be submitted following the instructions above and must identify any data elements addressed by number and description.

Dated: June 23, 2016.

Chiara A. McDowell,

Deputy Assistant Commissioner, Office of Acquisition Management, Federal Acquisition Service.

[FR Doc. 2016–16064 Filed 7–6–16; 8:45 am]

BILLING CODE 6820–34–P

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[2] Since the price paid per unit is exempt, GSA FAS will not release both the Total Price (data element #11) and Quantity of Item Sold (data element #8) as this may reveal the price paid per unit; therefore, Quantity of Item Sold is considered "exempt".

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0108; Docket 2016–0053; Sequence 20]

Submission for OMB Review; Bankruptcy

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Bankruptcy. A notice was published in the **Federal Register** at 81 FR 24104 on April 25, 2016. No comments were received.

DATES: Submit comments on or before August 8, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0108, Bankruptcy." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0108, Bankruptcy" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC Information Collection 9000–0108, Bankruptcy.

Instructions: Please submit comments only and cite Information Collection 9000–0108, Bankruptcy, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Curtis E. Glover, Sr., Procurement Analyst, Federal Acquisition Policy Division, GSA, 202–501–1448 or email *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Federal Acquisition Regulation, Part 42, Bankruptcy and Related Clause in 52.242–13; OMB Control Number 9000–0108.

Needs and Uses: The Government requires contractors to notify the contracting officer within five days after the contractor enters into bankruptcy. The Procuring Contracting Officer and the Administrative Contracting Officer use the information to ensure the contractor's ability to perform its Government contract.

A. Purpose

Under statute, contractors may enter into bankruptcy which may have a significant impact on the contractor's ability to perform its Government contract. The Government often does not receive adequate and timely notice of this event. The clause at 52.242–13 requires contractors to notify the contracting officer within 5 days after the contractor enters into bankruptcy.

B. Annual Reporting Burden

Respondents: 545.

Responses per Respondent: 1.

Annual Responses: 545.

Hours per Response: 1.25.

Total Burden Hours: 681.

Frequency of Collection: On occasion.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0108, Bankruptcy, in all correspondence.

Dated: June 30, 2016.

Mahruba Uddowla,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Governmentwide Policy, Office of Acquisition Policy.

[FR Doc. 2016–15997 Filed 7–6–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0012; Docket 2016–0053; Sequence 36]

Information Collection; Termination Settlement Proposal Forms—FAR (SF 1435 Through 1440)

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension, with changes, to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440), as prescribed at FAR subpart 49.6, Contract Termination Forms and Formats.

DATES: Submit comments on or before September 6, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0012, Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440) by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0012; Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440)". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0012; Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440)". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0012; Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440)" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0012.

Instructions: Please submit comments only and cite Information Collection 9000–0012, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover Sr., Procurement Analyst, Federal Acquisition Policy Division, at 202–501–1448, or email *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position per FAR subpart 49.6—Contract Termination Forms and Formats. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

B. Annual Reporting Burden

Respondents: 4,851.

Responses per Respondent: 1.7.

Total Responses: 8,247.

Hours per Response: 2.4.

Total Burden Hours: 19,793.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requester may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms—FAR (SF's 1435 through 1440), in all correspondence.

Dated: June 30, 2016.

Mahruba Uddowla,

Acting Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–15995 Filed 7–6–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Support Noncustodial Parent Employment Demonstration (CSPED).

OMB No.: 0970–0439.

Description: The Office of Child Support Enforcement (OCSE) within the Administration for Child and Families at the U.S. Department of Health and Human Services seeks an extension without change for an existing data collection called the *Child Support Noncustodial Parent Employment Demonstration (CSPED)* through September 30, 2018 (OMB no. 0970–439; expiration date September 30, 2016). Under CSPED, OCSE has issued grants to eight state child support agencies to provide employment, parenting, and child support services to parents who are having difficulty meeting their child support obligations. The overall objective of the CSPED evaluation is to document and evaluate the effectiveness of the approaches taken by these eight CSPED grantees. This evaluation will yield information about effective strategies for improving child support payments by providing non-custodial parents employment and other services through child support programs. It will generate extensive information on how these programs operated, what they cost, the effects the programs had, and whether the benefits of the programs exceed their costs. The information gathered will be critical to informing decisions related to future investments in child support-led employment-focused programs for non-custodial parents who have difficulty meeting their child support obligations.

The CSPED evaluation consists of the following two interconnected components or "studies":

1. *Implementation and Cost Study.* The goal of the implementation and cost study is to provide a detailed description of the programs—how they are implemented, their participants, the contexts in which they are operated, their promising practices, and their costs. The detailed descriptions will assist in interpreting program impacts, identifying program features and conditions necessary for effective program replication or improvement, and carefully documenting the costs of delivering these services. Key data collection activities of the implementation and cost study include: (1) Conducting semi-structured interviews with program staff and selected community partner organizations to gather information on program implementation and costs; (2) conducting focus groups with program participants to elicit participation experiences; (3) administering a web-based survey to program staff and community partners to capture broader staff program experiences; and (4) collecting data on study participant service use, dosage, and duration of enrollment throughout the demonstration using a web-based Management Information System (MIS). Two of these collection activities will be completed before the requested extension period begins. They include the focus groups and the web-based survey of program staff and community partners.

2. *Impact Study.* The goal of the impact study is to provide rigorous estimates of the effectiveness of the eight programs using an experimental research design. Program applicants who are eligible for CSPED services are randomly assigned to either a program group that is offered program services or a control group. The study MIS that documents service use for the implementation study is also being used by grantee staff to conduct random assignment for the impact study. The impact study relies on data from surveys of participants, as well as administrative records from state and county data systems. Survey data are collected twice from program applicants. Baseline information is collected from all noncustodial parents who apply for the program prior to random assignment. A follow-up survey is collected from sample members twelve months after random assignment. A wide range of measures are collected through surveys, including measures of employment stability and quality, barriers to employment, parenting and co-parenting, and demographic and socio-economic characteristics. In addition, data on child support obligations and payments, Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP) benefits, Medicaid receipt, involvement with the criminal justice system, and earnings and benefit data collected through the Unemployment Insurance (UI) system are obtained from state and county databases.

Respondents: Respondents to these activities include study participants, grantee staff and community partners, as well as state and county staff responsible for extracting data from government databases for the evaluation. Specific respondents per instrument are noted in the burden table below.

Annual Burden Estimates

The following table provides the burden estimates for the implementation and cost study and the impact study components of the current request. The requested extension period is estimated to be two years and three months, from July 1, 2016 to September 30, 2018. Thus, burden hours for all components are annualized over two years and three months.

IMPLEMENTATION AND COST STUDY

Instrument	Total number of respondents remaining	Number of responses per respondent remaining	Average burden hours per response remaining	Estimated total burden hours remaining	Total annual burden hours remaining
Staff interview topic guide with program staff and community partners	120	1	1	120	53
Study MIS for grantee and partner staff to track program participation	200	468.75	0.0333	3,125	1,390

IMPACT STUDY

Instrument	Total number of respondents remaining	Number of responses per respondent remaining	Average burden hours per response remaining	Estimated total burden hours remaining	Total annual burden hours remaining
Introductory Script for Program Staff	120	9	.1667	180	80
Introductory Script for Program Participants	1,050	1	.1667	175	78
Baseline Survey	1,000	1	.5833	583	259
Study MIS to Conduct Random Assignment	120	9	.1667	180	80
Protocol for collecting administrative records	32	1	8	256	114
12-month follow-up survey	1,476	1	0.75	1,107	492

Estimated Total Annual Burden Hours: 2,546.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Email: OIRASUBSMISSION@OMB.EoP.GOV, Attn:* Desk Officer for the Administration of Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–16050 Filed 7–6–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Tribal Consultation and Urban Confer Sessions on the State of the Great Plains Area Indian Health Service; Correction

AGENCY: Indian Health Service (IHS), Department of Health and Human Services.

ACTION: Notice; Correction.

SUMMARY: The Indian Health Service (IHS) published a document in the **Federal Register** on June 3, 2016, for the Notice of Tribal Consultation and Urban Confer Sessions on the State of the Great Plains Area Indian Health Service. The date and location of the onsite consultation session has been changed as reflected in this correction notice.

FOR FURTHER INFORMATION CONTACT: CAPT Chris Buchanan, Acting Director, Great Plains Area, Indian Health Service, 115 4th Ave. SE., Suite 309, Aberdeen, South Dakota, (605) 226–7584, Fax (605) 226–7541.

Correction

In the **Federal Register** of June 3, 2016, in FR Doc. 2016–13135, on page 35786, in the third column, under the heading **SUMMARY**, delete "July 13, 2016 in Aberdeen, South Dakota", and insert "July 15, 2016." On page 35786, in the third column, under the heading **DATES**, delete both references to Aberdeen, South Dakota in the first and second paragraphs. On page 35786, in the third column, under the heading **ADDESSES**, delete "The Dakota Event Center located at 720 Lamont Street, Aberdeen, South Dakota", and insert "The Best Western Ramkota Hotel located at 2111 N. Lacrosse Street, Rapid City, SD 57701".

Dated: June 29, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–16135 Filed 7–6–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Mechanisms of Neuroprotection and Neurodegeneration.

Date: July 20, 2016

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole L. Jelsema, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurodegeneration.

Date: July 21, 2016.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301–435–1220, *crosland@nih.gov,*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Stem Cells in Development and Neurodegeneration.

Date: July 22, 2016.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Stem Cells and Neurodevelopment.

Date: July 26, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 30, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–16041 Filed 7–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; IDD Research Centers.

Date: July 25–26, 2016.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW., Washington, DC 20005.

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 30, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–16042 Filed 7–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Outstanding New Environmental Scientist Review Meeting.

Date: July 25, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Keystone Building, 3003, 530 Davis Drive, Research Triangle Park, NC 27713, (Telephone Conference Call).

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/ Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 30, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–16043 Filed 7–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arizona:					
Maricopa (FEMA Docket No.: B–1556.	City of Peoria (14–09–4245P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	Mar. 18, 2016	040050
Maricopa (FEMA Docket No.: B–1608).	City of Peoria (15–09–2060P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	Apr. 29, 2016	040050
Pima (FEMA Docket No.: B–1556).	Unincorporated areas of Pima County (15–09–0394P).	The Honorable Sharon Bronson, Chair, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 210 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	Mar. 21, 2016	040073
Pima (FEMA Docket No.: B–1608).	Unincorporated areas of Pima County (15–09–1650P).	The Honorable Sharon Bronson, Chair, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 210 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	Apr. 15, 2016	040073
Yavapai (FEMA Docket No.: B–1608).	Unincorporated areas of Yavapai County (15–09–1727P).	The Honorable Craig Brown, Chairman, Board of Supervisors, Yavapai County, 1015 Fair Street, Prescott Valley, AZ 86305.	Yavapai County Flood Control District Office, 1120 Commerce Drive, Prescott, AZ 86305.	May 27, 2016	040093
California:					
Kern (FEMA Docket No.: B–1556).	City of Bakersfield (13–09–2248P).	The Honorable Harvey Hall, Mayor, City of Bakersfield, 1600 Truxtun Avenue, Bakersfield, CA 93301.	Public Works Department, 1501 Truxtun Avenue, Bakersfield, CA 93301.	Mar. 29, 2016	060077
Kern (FEMA Docket No.: B–1556).	Unincorporated areas of Kern County (13–09–2248P).	The Honorable David Couch, Chairman, Board of Supervisors, Kern County, 1115 Truxtun Avenue, 5th Floor, Bakersfield, CA 93301.	Kern County Planning Department, 2700 M Street, Suite 100, Bakersfield, CA 93301.	Mar. 29, 2016	060075
Riverside (FEMA Docket No.: B–1608).	City of Corona (15–09–1832P).	The Honorable Eugene Montanez, Mayor, City of Corona, 400 South Vicentia Avenue, Corona, CA 92882.	City Hall, 400 South Vicentia Avenue, Corona, CA 92882.	Mar. 31, 2016	060250
Riverside (FEMA Docket No.: B–1608).	City of Moreno Valley (15–09–1728P).	The Honorable Tom Owings, Mayor, City of Moreno Valley, 14177 Frederick Street, Moreno Valley, CA 92552.	City Hall, 14177 Frederick Street, Moreno Valley, CA 92552.	May 26, 2016	065074
Riverside (FEMA Docket No.: B–1608).	City of Perris (15–09–1728P).	The Honorable Daryl R. Busch, Mayor, City of Perris, 101 North D Street, Perris, CA 92570.	City Hall, 101 North D Street, Perris, CA 92570.	May 26, 2016	060258
Riverside (FEMA Docket No.: B–1608).	Unincorporated areas of Riverside County (15–09–1832P).	The Honorable Marion Ashley, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501.	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	Mar. 31, 2016	060245
San Diego (FEMA Docket No.: B–1608).	City of El Cajon (15–09–1699P).	The Honorable Bill Wells, Mayor, City of El Cajon, 200 Civic Center Way, El Cajon, CA 92020.	City Hall, 200 Civic Center Way, El Cajon, CA 92020.	Apr. 8, 2016	060289
San Mateo (FEMA Docket No.: B–1556).	Unincorporated areas of San Mateo County (15–09–1770P).	The Honorable Carole Groom, Chair, Board of Supervisors, San Mateo County, 400 County Center, Redwood City, CA 94063.	San Mateo County Planning and Building Department, 455 County Center, Redwood City, CA 94063.	Mar. 31, 2016	060311
Hawaii:					
Maui (FEMA Docket No.: B–1556).	Maui County (15–09–2997X).	The Honorable Alan M. Arakawa, Mayor, County of Maui, 200 South High Street, Kalana O Maui Building, 9th Floor, Wailuku, HI 96793.	Maui County Planning Department, 2200 Main Street, One Main Plaza Building, Suite 315, Wailuku, HI 96793.	Mar. 28, 2016	150003
Nevada:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Clark (FEMA Docket No.: B–1608).	Unincorporated areas of Clark County (15–09–2566P).	The Honorable Steve Sisolak, Chairman, Board of Supervisors, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Office of the Director of Public Works, 500 South Grand Central Parkway, Las Vegas, NV 89155.	May 19, 2016	320003
Clark (FEMA Docket No.: B–1608).	Unincorporated areas of Clark County (16–09–0035P).	The Honorable Steve Sisolak, Chairman, Board of Supervisors, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Office of the Director of Public Works, 500 South Grand Central Parkway, Las Vegas, NV 89155.	May 10, 2016	320003
Douglas (FEMA Docket No.: B–1608).	Unincorporated areas of Douglas County (15–09–0074P).	The Honorable Doug N. Johnson, Chairman, Board of Supervisors, Douglas County, P.O. Box 218, Minden, NV 89423.	Douglas County Public Works Department, 1615 8th Street, Minden, NV 89423.	May 26, 2016	320008
Douglas (FEMA Docket No.: B–1556).	Unincorporated areas of Douglas County (15–09–2371P).	The Honorable Doug N. Johnson, Chairman, Board of Supervisors, Douglas County, P.O. Box 218, Minden, NV 89423.	Douglas County Public Works Department, 1615 8th Street, Minden, NV 89423.	Mar. 24, 2016	320008
Washoe (FEMA Docket No.: B–1608).	City of Reno (16–09–0377X).	The Honorable Hillary Schieve, Mayor, City of Reno, 1 East 1st Street, Reno, NV 89505.	City Hall Annex, 450 Sinclair Street, Reno, NV 89501.	May 25, 2016	320020

[FR Doc. 2016–16055 Filed 7–6–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1631]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before October 5, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1631, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 20, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Seneca Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Anderson County, South Carolina and Incorporated Areas	
City of Anderson	Public Works Building, 1100 Southwood Street, Anderson, SC 29624.
Town of Pendleton	Town Municipal Complex, 310 Greenville Street, Pendleton, SC 29670.
Unincorporated Areas of Anderson County	Anderson County Department of Development Standards, 401 East River Street, Anderson, SC 29624.
Oconee County, South Carolina and Incorporated Areas	
City of Seneca	City Hall, 221 East North 1st Street, Lower Floor, Seneca, SC 29678.
Unincorporated Areas of Oconee County	Oconee County Council Chambers, Administration Office Building, 415 South Pine Street, Walhalla, SC 29691.
Pickens County, South Carolina and Incorporated Areas	
City of Clemson	City Hall, 1250 Tiger Boulevard, Clemson, SC 29631.
Unincorporated Areas of Pickens County	Pickens County Building Codes Administration, 222 McDaniel Avenue, B–10, Pickens, SC 29671.

[FR Doc. 2016–16056 Filed 7–6–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–46]

30-Day Notice of Proposed Information Collection: Enterprise Income Verification (EIV) Systems User Access Authorization Form and Rules of Behavior and User Agreement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* August 8, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 20, 2016 at 81 FR 23325.

A. Overview of Information Collection

Title of Information Collection: EIV System User Access Authorization Form and Rules of Behavior and User Agreement.

OMB Approval Number: 2577–0267.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–52676 and HUD–52676–1.

Description of the need for the information and proposed use: In accordance with statutory requirements at 5 U.S.C. 552a, as amended (most commonly known as the Federal Privacy Act of 1974), the Department is required to account for all disclosures of information contained in a system of records. Specifically, the Department is required to keep an accurate accounting of the name and address of the person or agency to which the disclosure is made. The Enterprise Income Verification (EIV) System (HUD/PIH–5) is classified as a System of Records, as initially published on July 20, 2005, in the **Federal Register** at page 41780 (70 FR 41780) and amended and published on August 8, 2006, in the **Federal Register** at page 45066 (71 FR 45066).

As a condition of granting access to the EIV system, each prospective user of the system must (1) request access to the system; (2) agree to comply with HUD's established rules of behavior; and (3) review and signify their understanding of their responsibilities of protecting data under the Federal Privacy Act (5 U.S.C. 522a, as amended). As such, the collection of information about the user and the type of system access required by the prospective user is required by HUD to: (1) Identify the user; (2) determine if the prospective user in fact requires access to the EIV system and in what capacity; (3) provide the prospective user with information related to the Rules of Behavior for system usage and the user's responsibilities to safeguard data accessed in the system once access is granted; and (4) obtain the signature of the prospective user to certify the user's understanding of the Rules of Behavior and responsibilities associated with his/her use of the EIV system.

HUD collects the following information from each prospective user: Public Housing Agency (PHA) code, organization name, organization address, prospective user's full name, HUD-assigned user ID, position title, office telephone number, facsimile number, type of work which involves the use of the EIV system, type of system action requested, requested access roles to be assigned to prospective user, public housing development numbers to be assigned to prospective PHA user, and prospective user's signature and date of request. The information is collected electronically and manually (for those who are unable to transmit electronically) via a PDF-fillable or Word-fillable document, which can be emailed, faxed or mailed to HUD. If this information is not collected, the Department will not be in compliance with the Federal Privacy Act and be subject to civil penalties.

Estimate Number of Respondents: 12,777.

Estimate Number of Responses: 13,209.

Frequency of Response: On occasion.

Average Hours per Response: 0.25.

Total Estimated Burden: 10,724.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 30, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–16117 Filed 7–6–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–48]

30-Day Notice of Proposed Information Collection: Fair Housing Initiatives Program Grant Application and Monitoring Reports

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* August 8, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Inez C. Downs, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Inez C. Downs at *Inez.C.Downs@hud.gov* or telephone 202–402–8046. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Downs.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 28, 2016 at 81 FR 25413.

A. Overview of Information Collection

Title of Information Collection: Fair Housing Initiatives Program Grant Application and Monitoring Reports.

OMB Approval Number: 2529–0033.

Type of Request: Extension of currently approved collection.

Form Number: HUD 904 A, B and C, SF–425, SF–424, SF–LLL, HUD–2880, HUD–2990, HUD–2993, HUD–424CB, HUD–424–CBW, HUD–2994–A, HUD–96010, and HUD–27061.

Description of the need for the information and proposed use: The collection is needed to allow the Fair Housing Initiatives Program (FHIP) to request applicant information necessary to complete a grant application package during the Notice of Funding Availability (NOFA) grant application process. The collection is used to assist the Department in effectively evaluating grant application packages to select the highest ranked applications for funding to carry out fair housing enforcement and/or education and outreach activities under the following FHIP initiatives: Private Enforcement, Education and Outreach, and Fair Housing Organization. The collection is also needed for the collection of post-award report and other information used to monitor grants and grant funds. Information collected from quarterly and final progress reports and enforcement logs will enable the Department to evaluate the performance of agencies that receive funding and determine the impact of the program on preventing and eliminating discriminatory housing practices.

Respondents (*i.e.* affected public): 400.

Estimate Number of Respondents: 876.

Estimate Number of Responses: 1,366.

Frequency of Response: 14.

Average Hours per Response: 187.50.

Total Estimated Burden: 46,356.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 30, 2016.

Inez C. Downs,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–16118 Filed 7–6–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–47]

30-Day Notice of Proposed Information Collection: Enterprise Income Verification (EIV) Systems—Debts Owed to Public Housing Agencies and Terminations

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date*: August 8, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 26, 2016 at 81 FR 24634.

A. Overview of Information Collection

Title of Information Collection: Enterprise Income Verification (EIV) Systems—Debts Owed to Public Housing Agencies and Terminations.

OMB Approval Number: 2577–0266.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–52675.

Description of the Need for the Information and Proposed Use: In accordance with 24 CFR 5.233, processing entities that administer the Public Housing, Section 8 Housing Choice Voucher, Moderate Rehabilitation, Project-based Voucher, Project-based Section 8, Section 202 of the Housing Act of 1959, Section 811 of the Cranston-Gonzalez National Affordable Housing Act, Sections 221(d)(3) and 236 of the National Housing Act, and Section 101 of the Housing and Urban Development Act of 1965 Rent Supplement programs are required to use HUD's Enterprise Income Verification (EIV) system to verify employment and income information of program participants and to reduce administrative and subsidy payment errors. The EIV system is a system of records owned by HUD, as published in the **Federal Register** on July 20, 2005 at 70 FR 41780 and updated on August 8, 2006 at 71 FR 45066.

The Department seeks to identify families who no longer participate in a HUD rental assistance program due to adverse termination of tenancy and/or assistance, and owe a debt to a Public Housing Agency (PHA). In accordance with 24 CFR 982.552 and 960.203, the PHA may deny admission to a program if the family is not suitable for tenancy for reasons such as, but not limited to: Unacceptable past performance in meeting financial obligations, history of criminal activity, eviction from Federally assisted housing in the last five years, family has committed fraud, bribery, or any other corrupt or criminal act in connection with a Federal housing program, or if a family currently owes rent or other amounts to the PHA or to another PHA in connection with a Federally assisted housing program under the U.S. Housing Act of 1937.

Within the scope of this collection of information, HUD seeks to collect from all PHAs, the following information:

1. Amount of debt owed by a former tenant to a PHA;
2. If applicable, indication of executed repayment agreement;
3. If applicable, indication of bankruptcy filing;
4. If applicable, the reason for any adverse termination of the family from a Federally assisted housing program.

This information is collected electronically from PHAs via HUD's EIV system. This information is used by HUD to create a national repository of families that owe a debt to a PHA and/or have been terminated from a federally assisted housing program. This national repository is available within the EIV system for all PHAs to access during the time of application for rental assistance. PHAs are able to access this information to determine a family's suitability for rental assistance, and avoid providing limited Federal housing assistance to families who have previously been unable to comply with HUD program requirements. If this information is not collected, the Department is at risk of paying limited Federal dollars on behalf of families who may not be eligible to receive rental housing assistance. Furthermore, if this information is not collected, the public will perceive that there are no consequences for a family's failure to comply with HUD program requirements.

Respondents: Public Housing Agencies.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–52675 ...	3937	Monthly	47,244	0.0833 Hours or 5 minutes per family.	26,177	$21.03	$550,502.31

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 30, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–16116 Filed 7–6–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2016–N102; FXES11120100000–167–FF01E00000]

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Kauai Island Utility Cooperative Long-Term Habitat Conservation Plan, Kauai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a draft environmental impact statement (DEIS) to evaluate the impacts of several alternatives relating to the requested issuance of an Endangered Species Act (ESA) Incidental Take Permit (ITP) to the Kauai Island Utility Cooperative (KIUC) that would authorize take of listed species caused by activities covered under the Kauai Island Utility Cooperative Long-term Habitat Conservation Plan (KIUC LTHCP). We also provide this notice to announce a public scoping period.

DATES: The public scoping period begins with the publication of this notice in the **Federal Register** and will continue through September 6, 2016. The Service will consider all comments on the scope of the DEIS analysis that are received or postmarked by this date. Comments received or postmarked after this date will be considered to the extent practicable. The Service will also hold one public scoping open house, at the following time and location during the scoping period:

- July 20, 2016—Kauai Community College, 3–1901 Kaumualii Highway, Lihue, Kauai, HI 96766, 5 to 7 p.m.

The scoping meeting will provide the public an opportunity to ask questions, discuss issues with Service and State staff regarding the DEIS, and provide written comments.

ADDRESSES: To request further information or submit written comments, please use one of the following methods:

- *U.S. Mail:* Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850. Include "KIUC HCP and scoping EIS" in the subject line of your request or comment.
- *Email: KIUCLongTermhcp@fws.gov.* Include "KIUC HCP and scoping EIS" in the subject line of the message.
- *Fax:* 808–792–9580, Attn: Field Supervisor. Include "KIUC HCP and scoping EIS" in the subject line of the message.
- *Internet:* You may obtain copies of this notice on the Internet at *https://www.fws.gov/pacificislands/,* or from the Service's Pacific Islands Fish and Wildlife Office in Honolulu, Hawaii (see **FOR FURTHER INFORMATION CONTACT** section).

We request that you send comments by only one of the methods described above. See the Public Availability of Comments section below for more information.

FOR FURTHER INFORMATION CONTACT: Lasha-Lynn Salbosa, by telephone at 808–792–9442, or by email at *Lasha-Lynn_Salbosa@fws.gov.* Hearing or speech impaired individuals may call the Federal Information Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a draft environmental impact statement (DEIS) to evaluate the impacts of several alternatives relating to the requested issuance of an Endangered Species Act (ESA) Incidental Take Permit (ITP) to the Kauai Island Utility Cooperative (KIUC) that would authorize take of listed species caused by activities covered under the Kauai Island Utility Cooperative Long-term Habitat Conservation Plan (KIUC LTHCP). We also provide this notice to announce a public scoping period.

The KIUC LTHCP is being prepared by KIUC to address the effects of its generation, transmission, and distribution of electricity on listed species within the plan area, which covers the full geographic extent of the Island of Kauai, Hawaii. KIUC anticipates requesting incidental take coverage for the endangered Hawaiian petrel (*Pterodroma sandwichensis*), threatened Newell's shearwater (*Puffinus newelli*), and a species proposed for listing as endangered, the band-rumped storm-petrel (*Oceanodroma castro*). These species are collectively referred to as the "Covered Species." The activities covered under the KIUC LTHCP ("Covered Activities") include construction of certain planned facilities; power line construction, reconfiguration, or undergrounding; installation and operation of streetlight fixtures at the request of State, County, or private entities; the operation and maintenance of all existing and planned KIUC facilities and infrastructure; and activities associated with the management of certain lands to mitigate for the take of Covered Species.

This notice was prepared pursuant to the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA), and its implementing regulations in the Code of Federal Regulations at 40 CFR 1506.6, and pursuant to section 10(c) of the ESA. We intend to prepare a DEIS to evaluate the impacts of several alternatives related to the potential issuance of an ITP under the KIUC LTHCP. KIUC intends to request a permit term of 30 years. The primary purpose of the scoping process is for the public and other agencies to assist in developing the DEIS by identifying important issues and identifying alternatives that should be considered.

Background

Section 9 of the ESA prohibits "take" of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term "take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct" (16 U.S.C. 1532(19)). The term "harm" is defined by regulation as "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering" (50 CFR 17.3). The term "harass" is defined in the regulations as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering" (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32.

KIUC Short-Term HCP

In 2011, the KIUC Short-Term Habitat Conservation Plan (STHCP) was approved by the Service, and KIUC received an ITP for the Covered Species (*i.e.*, the Newell's shearwater, Hawaiian petrel, and the band-rumped storm petrel). The Covered Species are subject to injury or mortality as a result of colliding with KIUC-owned power lines and utility infrastructure, and injury or mortality as a result of attraction to nighttime lighting from KIUC-owned and operated streetlights and facilities. The ITP authorized an annual take amount of 162 Newell's shearwaters, two Hawaiian petrels, and two band-rumped storm petrels over a 5-year period, as a result of attraction to, or collision with, KIUC facilities. In total, the ITP authorized a combined take amount of 830 sub-adults or adults of the Covered Species.

Current estimates of the Newell's shearwater population, of which 90 percent nest on Kauai, range from 16,200 to 24,300, based on at-sea population estimates from 1998 through 2011 (Joyce 2013), and projected under various annual levels of decline (Griesemer and Holmes 2011). The Newell's shearwater rangewide population has experienced an over 75 percent decline from 1993 through 2009 (Day et al. 2003; Holmes et al. 2009). The Hawaiian petrel population nests on several of the southeastern Hawaiian Islands, including Hawaii and Maui, with the total population estimated at 20,000 individuals (Spear et al. 1995). The majority of the breeding population nests on Kauai (Ainley et al. 1997). An updated assessment of the Hawaiian petrel population on Kauai is under way (A. Raine, personal communication, September 30, 2015). Seabird colony monitoring data reflect significant threats from feral pig, cat, barn owl, and rat predation, as well as habitat degradation from invasive plants. Combined with the take caused by power line collisions and light attraction, these threat factors have resulted in the extirpation of at least three breeding colonies of these species on Kauai since 2011 (Holmes and Troy 2008).

The 2011 STHCP established a comprehensive monitoring and research program designed to further evaluate the impact of the power line system on seabird populations and to provide key biological data to more adequately inform a longer term HCP and take authorization. To this end, KIUC provides funding to the Kauai Endangered Seabird Recovery Project (KESRP), a project of the University of Hawaii's Pacific Cooperative Studies Unit, to monitor seabird colonies and develop approaches to assess seabird-power line collisions. Due to the remote location of many power lines on Kauai and the nocturnal behavior of seabirds, in 2012 KESRP developed an acoustic song-meter monitoring system to detect seabird collisions. This acoustic system became the foundation for KIUC's Underline Monitoring Program (UMP) and has been accepted and is funded by KIUC.

During the course of implementation of the KIUC STHCP, KESRP observed a total of 28 seabird power line collisions using night vision equipment. Of the 28 seabird power line collisions observed, only one of these collision events definitively resulted in an immediate grounded bird within the observer's field of view. Additionally, about 25 deceased Newell's shearwaters have been opportunistically found from 2011 through 2015, associated with KIUC power lines or lights. The acoustic system, which is able to monitor the power lines for seabird collisions more extensively than human observers can, has detected a minimum of 1,012 and 1,002 seabird collision events in 2014 and 2015, respectively (KIUC STHCP 2014 and 2015 UMP Reports). Since 2012, KESRP, in collaboration with KIUC, has identified all high and medium risk power line spans that pose a threat to the Covered Species. These high and medium risk lines are continually monitored every year, and those data are used to plan and test for effective minimization measures, including reconfiguring lines or installing bird diverters. While the acoustic system has been successful in detecting seabird power line collisions, only a subset of the power line system can be monitored and therefore collisions outside of the monitored areas must be estimated. Moreover, while a minimum of 1,002 seabird collision events have been detected in 2015, the fate of the birds that collided with these lines is unknown. Based on KESRP field observations, it is certain that some portion of these collisions results in immediate grounding or mortality, and that some additional proportion results in harm or injury, or potential mortality sometime after the collision event. Previous scientific studies based on waterfowl and their interactions with power lines have estimated that this subsequent mortality after the collision event could range from 20 percent to 74 percent of total detected collisions (Bevanger 1995; Bevanger 1999; Beaulaurier 1981; and Shaw et al. 2010).

The STHCP has been successful in guiding measures that KIUC has implemented to mitigate the effects of its existing facilities on the Covered Species; increasing knowledge related to the impact of KIUC's power line system on seabird populations; providing key biological data concerning the Covered Species; and improving our understanding of the effectiveness of conservation measures to more adequately inform a longer term habitat conservation plan and take authorization.

In 2015, KIUC spent $2.32 million to implement the conservation program under the STHCP. Sixty-two percent of this budget funded seabird colony management (*i.e.*, predator control and monitoring). Under the STHCP, KIUC is funding a total of 851 acres of seabird colony management (*i.e.*, predator control) at three sites within the State's Hono o Na Pali Natural Area Reserve, and a larger location within the National Tropical Botanical Garden's Upper Limahuli Preserve. The remaining budget funds the retrieval and rehabilitation of seabirds on Kauai, and the KIUC Underline Monitoring Program, which includes testing and installation of avian deterrent devices. KIUC has undergrounded or reconfigured 25 percent of their identified high collision-risk power lines since 2011. KIUC continues to use the underline monitoring data to direct minimization actions, including reconfiguring or undergrounding power lines, and installing bird deterrent devices to minimize impacts from high collision-risk power lines. Although KIUC's current mitigation and minimization programs are meaningful, these efforts are likely not commensurate with the actual level of take occurring.

The STHCP expiration date was in May 2016. On April 12, 2016, we received an application for renewal of that permit pending preparation of the LTHCP.

Proposed Long-Term Habitat Conservation Plan

The KIUC LTHCP is being prepared by KIUC to cover the generation, transmission, and distribution of electricity within the plan area, which covers the full geographic extent of the Island of Kauai, Hawaii. KIUC intends to submit the LTHCP as part of the its application for a Federal ITP and a State incidental take license, in accordance with respective Federal and State permit issuance criteria. KIUC intends to develop the LTHCP in coordination with the Service, Hawaii Department of Land and Natural Resources-Division of Forestry and Wildlife, Kauai Endangered Seabird Recovery Project, Kauai Seabird Habitat Conservation Program, Kauai Humane Society, and the National Tropical Botanical Garden.

In response to the Service's recommendation in 2011, KIUC was participating in the planning for a State-sponsored islandwide HCP (the "Kauai Seabird Habitat Conservation Program" or "KSHCP") which was intended to address take of the Covered Species from attraction to, or collision with various lights and power lines on the island of Kauai, due to activities by numerous entities in addition to KIUC. However, in November 2015, the State, in consultation with the Service, decided to limit the KSHCP planning effort just to light attraction take. As a result of this decision to limit the KSHCP to light attraction take, KIUC is now seeking long-term incidental take authorization through its own separate KIUC LTHCP.

Covered Species and Activities: The Covered Species addressed in the LTHCP will be the same as those addressed in the STHCP: The endangered Hawaiian petrel, threatened Newell's shearwater, and the band-rumped storm-petrel, a species proposed for listing as endangered. As noted above, the Covered Species are subject to collisions with power lines and other infrastructure while flying at night between their nesting colonies and at-sea foraging areas. The Covered Species, particularly fledglings, are also affected by and attracted to bright nighttime lights. Disoriented birds are commonly observed circling repeatedly around exterior light sources until they fall exhausted to the ground or collide with structures.

The KIUC LTHCP and ITP will address the incidental take of the Covered Species caused by Covered Activities that are described and analyzed in the LTHCP. In accordance with the requirements of section 10(a)(2)(A) of the ESA, the LTHCP will also address: The impacts to the Covered Species caused by the taking; the steps KIUC will take to minimize and mitigate those impacts; the funding that will be available to implement those steps; what alternative actions to the taking that KIUC considered and the reasons why such alternatives are not being utilized; and other measures that the Service may require as being necessary or appropriate for purposes of the plan.

The KIUC intends to utilize new information generated through implementation of the STHCP to develop a long-term HCP addressing the Covered Species in support of its request for a 30-year ITP. It is anticipated that KIUC will request authorization for the lethal take of approximately 100 to 1,000 individuals annually of the Covered Species combined. A more specific total combined amount of take, and a more specific amount of take for each Covered Species that KIUC will request will be described in the LTHCP.

KIUC's existing facilities include over 1,400 miles of electrical transmission and distribution lines, two fossil fuel-fired generating stations, two hydroelectric stations, two 12-megawatt solar energy parks, twelve substations, and approximately 3,500 streetlights. Covered Activities under the KIUC LTHCP are expected to include: (1) KIUC operations, including actions necessary to construct, operate, maintain and repair all existing and certain planned KIUC facilities and infrastructure; (2) minimization measures, including installation of bird deterrents, undergrounding power lines, line reconfiguring, line removal, relocating facilities, and line rerouting; and (3) mitigation measures, including construction and maintenance of predator-proof fenced enclosures, invasive predator reduction efforts, and seabird colony monitoring and habitat management activities to create or enhance seabird breeding habitat. The KIUC LTHCP is also expected to include the following as Covered Activities: 600 new streetlights; approximately 15 miles of new transmission lines (much of it on already constructed poles or underground); approximately 15 miles per year of line improvements, re-configured, or undergrounded distribution lines; the closure of one substation and the construction of 3 or more new facilities, including the Aepo Substation, Hanahanapuni Switching Station, and the Kilohana Switching station. Additional substations may also be built for renewable projects that cannot be integrated into the existing facilities due to their location, capacity, or operation constraints.

Minimization and Mitigation Measures: The KIUC LTHCP is expected to include a comprehensive minimization program that will be based on the results of extensive underline monitoring conducted under the STHCP. These minimization measures would be designed to reduce the amount of Covered Species collisions with power lines in areas known to have a high risk of seabird-line collisions. These minimization measures are likely to include installation of bird deterrents and line reconfiguring.

The KIUC LTHCP is expected to include a variety of conservation measures to mitigate unavoidable impacts to the Covered Species. One set of measures is intended to improve the breeding success of the Covered Species. These measures are likely to include: the installation and maintenance of predator-proof fencing at two or more locations encompassing at least several hundred acres of existing Covered Species breeding colonies in northern, interior areas of Kauai; post-fencing efforts to greatly reduce or eliminate predator populations from within the fenced areas; efforts to reduce predator populations at other locations; and one or more social attraction projects to create new breeding areas within appropriate habitat for the Covered Species. Other mitigation measures are expected to include: continued implementation of the *Save Our Shearwaters* program which retrieves downed seabirds and releases them back to the wild following evaluation and any necessary rehabilitation; surveys to identify the location of additional breeding colonies of the Covered Species on Kauai; and research to evaluate methods of improving Covered Species breeding success through habitat and predator management.

Draft Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Based on 40 CFR 1508.27 and 40 CFR 1508.2, we have determined that the proposed KIUC LTHCP and ITP may have significant effects on the human environment. Therefore, before deciding whether to issue an ITP, we will prepare a DEIS to analyze the environmental impacts associated with that action.

The DEIS will consider the impacts of the issuance of an ESA section 10(a)(1)(B) permit on the human environment. The DEIS will also include an analysis of a reasonable range of alternatives. Such alternatives may include, but are not limited to, variations in: The permit term or permit structure; the level of take allowed; the level, location, or type of minimization, mitigation, or monitoring provided under the HCP; the scope of Covered Activities; the list of Covered Species; or a combination of these factors. Other alternatives could include undergrounding, reconfiguring or taking other measures to minimize the take at all five power line segments that accounted for 72 percent of all seabird collisions in 2014, expanding existing predator control areas to maximize seabird protection, and the addition of one or more seabird colony management sites in the Upper Manoa Valley. Additionally, a No Action Alternative will be included. Under the No Action Alternative, the Service would not issue an ITP, and KIUC would be obligated to avoid incidental take of federally-listed species or risk violation of Federal and State law.

The DEIS will identify and describe direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomics, climate, and other environmental resources that could occur with the implementation of the proposed action and alternatives. The Service will also identify measures, consistent with NEPA and other relevant considerations of national policy, to avoid or minimize any significant effects of the proposed action on the quality of the human environment. Following completion of the environmental review, the Service will publish a notice of availability and a request for comment on the DEIS, which will include a draft of the proposed KIUC LTHCP.

Request for Information

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Native Hawaiian organizations or entities, industry, or any other interested party on this notice. We will consider these comments in developing the DEIS. We seek specific comments on:

1. Biological information and relevant data concerning the Covered Species;
2. Additional information concerning the range, distribution, population size, and population trends of the Covered Species;
3. Potential direct, indirect, and cumulative impacts that implementation of the proposed Covered Activities and mitigation/minimization measures could have on the Covered Species; and other endangered or threatened species, and their communities or habitats; and other aspects of the human environment;
4. Whether there are connected, similar, or reasonably foreseeable cumulative actions;
5. Other possible alternatives to the proposed permit action that the Service should consider, including additional or alternative mitigation and minimization measures;
6. Other current or planned activities in the subject area and their possible impacts on Covered Species;
7. The presence of archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
8. Identification of any other environmental issues that should be considered with regard to the proposed KIUC LTHCP and permit action.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed above in the **ADDRESSES** section. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we use in preparing the DEIS, will be available for public inspection by appointment, during normal business hours, at the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Scoping Meeting

See **DATES** section above for the date and time of the public scoping meeting. The primary purpose of the meeting and the public comment period is to provide the public with a general understanding of the background of the proposed action and to solicit suggestions and information on the scope of issues and alternatives we should consider when preparing the DEIS. Written comments will be accepted at the meeting. Comments can also be submitted by the methods listed in the **ADDRESSES** section. Once the DEIS and proposed KIUC LTHCP are complete and made available for review, there will be additional opportunity for public comment on the content of these documents.

Persons needing reasonable accommodations in order to attend and participate in the public scoping meeting should contact the Service's Pacific Islands Fish and Wildlife Office using one of the methods listed above in **ADDRESSES** as soon as possible. In order to allow sufficient time to process requests, please make contact no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*), and per NEPA regulations (40 CFR 1501.7, 40 CFR 1506.5 and 1508.22).

Theresa Rabot,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2016–16077 Filed 7–6–16; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2016–0069; FF09E15000–FXHC112509CBRA1–167]

John H. Chafee Coastal Barrier Resources System; Bay and Gulf Counties, FL; Middlesex and Monmouth Counties, NJ; Availability of Draft Maps and Request for Comments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of six John H. Chafee Coastal Barrier Resources System (CBRS) draft revised maps for public review and comment. The draft maps, all dated May 16, 2016, are for four existing CBRS units located in Bay and Gulf Counties, Florida, and for three existing units and three proposed new units located in Middlesex and Monmouth Counties, New Jersey.

DATES: To ensure consideration, we must receive your written comments by August 22, 2016.

ADDRESSES: You may submit written comments by one of the following methods:

- *Electronically:* Go to the Federal e–Rulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–HQ–ES–2016–0069, which is the docket number for this notice. Then, on the left side of the screen, under the Document Type heading, click on the Notices link to locate this document and submit a comment.
- *By hard copy:* Submit by U.S. mail or hand–delivery to: Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2016–0069; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041–3808.

We request that you send comments by only the methods described above. We will post all information received on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Katie Niemi, Coastal Barriers Coordinator, (703) 358–2071 (telephone); or *CBRA@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

Coastal barriers are typically elongated, narrow landforms located at the interface of land and sea, and are inherently dynamic ecosystems. Coastal barriers provide important habitat for fish and wildlife, and serve as the mainland's first line of defense against the impacts of severe storms. With the passage of the Coastal Barrier Resources Act (CBRA) in 1982 (Pub. L. 97–348), Congress recognized that certain actions and programs of the Federal Government have historically subsidized and encouraged development on coastal barriers, where severe storms are much more likely to occur, and the result has been the loss of natural resources; threats to human life, health, and property; and the expenditure of millions of tax dollars each year.

The CBRA established the CBRS, which comprised 186 geographic units encompassing approximately 453,000 acres of undeveloped lands and associated aquatic habitat along the Atlantic and Gulf of Mexico coasts. The CBRS was expanded by the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591) to include additional areas along the Atlantic and Gulf of Mexico coasts, as well as areas along the coasts of the Great Lakes, the U.S. Virgin Islands, and Puerto Rico. The CBRS now comprises a total of 859 geographic units, encompassing approximately 3.3 million acres of relatively undeveloped coastal barrier lands and associated aquatic habitat. These areas are depicted on a series of maps entitled ''John H. Chafee Coastal Barrier Resources System.''

Most new Federal expenditures and financial assistance that would have the effect of encouraging development are prohibited within the CBRS. However, development can still occur within the CBRS, provided that private developers or other non-Federal parties bear the full cost, rather than the American taxpayers.

The CBRS includes two types of units, System Units and Otherwise Protected Areas (OPAs). System Units generally comprise private lands that were relatively undeveloped at the time of their designation within the CBRS. Most new Federal expenditures and financial assistance, including Federal flood insurance, are prohibited within System Units. OPAs generally comprise lands established under Federal, State, or local law or held by a qualified organization primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. OPAs are denoted with a ''P'' at the end of the unit number. The only Federal spending prohibition within OPAs is the prohibition on Federal flood insurance.

The Secretary of the Interior (Secretary), through the Service, is responsible for administering the CBRA, which includes maintaining the official maps of the CBRS, consulting with Federal agencies that propose to spend funds within the CBRS, preparing updated maps of the CBRS, and making recommendations to Congress regarding changes to the CBRS. Aside from three minor exceptions, only Congress—through new legislation—can modify the maps of the CBRS to add or remove land. These exceptions, which allow the Secretary to make limited modifications to the CBRS (16 U.S.C. 3503(c)–(e)), are for: (1) Changes that have occurred to the CBRS as a result of natural forces, (2) voluntary additions to the CBRS by property owners, and (3) additions of excess Federal property to the CBRS.

The Service receives numerous requests from property owners and other interested parties who seek to remove areas from the CBRS. When assessing whether a proposed change to remove an area from the CBRS constitutes an appropriate technical correction, we consider whether the original intent of the boundaries is reflected on the maps (*i.e.,* whether the lines on the maps appropriately follow the features they were intended to follow on the ground). We also consider the level of development that was on the ground when the area was originally included in the CBRS by Congress.

The Service generally does not recommend removals from the CBRS, unless there is clear and compelling evidence that a mapping error was made. In cases where mapping errors are found, the Service supports changes to the maps and works with Congress and other interested parties to create comprehensively revised maps using modern digital technology.

Mapping Protocol for the Protection of Existing Critical Facilities

Through this notice, we are developing a new CBRS mapping protocol for critical facilities located within and immediately adjacent to the CBRS. Under certain limited circumstances, the Service may consider mapping a CBRS area to allow for the protection of existing critical facilities (*e.g.,* sewage treatment facilities, nuclear facilities, and hospitals) that primarily serve areas located outside of the CBRS. In such cases, the following criteria must be met: (1) The protection of the facility must be consistent with the three purposes of the CBRA: To minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to the fish, wildlife, and other natural resources associated with coastal barriers; (2) the protection of the facility should not encourage new development within the CBRS (*e.g.*, a levee protecting a facility should not also unnecessarily protect an undeveloped area within the CBRS or an area within the CBRS that developed after the unit was established); and (3) and there must be no reasonable alternative to protect the facility (*e.g.*, nonstructural floodproofing, buyouts to allow for construction of levees and flood walls outside of the CBRS, alternative project design that does not infringe upon the CBRS, etc.). For the purpose of this protocol, the Service defines "existing" as being on-the-ground as of the date the area was added to the CBRS, and "critical facility" as a structure or other improvement that, because of its function, would likely cause catastrophic human health and safety impacts if it is destroyed or damaged or if its functionality is impaired. For the purposes of this protocol, a critical facility does not include other infrastructure (*e.g.*, roads, bridges, electric lines, etc.) that is commonly included within the CBRS.

The Service has developed this new protocol for critical facilities to allow for the protection of the Bayshore Regional Sewerage Authority (BRSA) Wastewater Treatment Facility in Monmouth County, New Jersey (see Proposed Map Modifications section below). In cases where the Service recommends the removal of an area from the CBRS in accordance with this protocol, the change will become effective only if the updated map is adopted through legislation enacted by Congress.

Proposed Map Modifications

The Service has prepared six comprehensively revised draft maps dated May 16, 2016, that propose modifications to the CBRS in Florida and New Jersey. Below is a summary of the changes depicted on the draft maps.

Bay County, Florida

The Service has prepared three draft maps for St. Andrew Complex P31/P31P located in Bay County, Florida. The draft maps for Units P31 and P31P remove approximately 125 acres from the CBRS (98 acres of fastland and 27 acres of associated aquatic habitat) and add approximately 1,582 acres to the CBRS (131 acres of fastland and 1,451 acres of associated aquatic habitat). The draft maps remove areas (some of which were inappropriately included within the CBRS in the past) and add areas that meet the CBRA criteria for inclusion within the CBRS (16 U.S.C. 3503(g)(1)). The draft maps also reclassify certain areas from System Unit to OPA, and vice versa.

Gulf County, Florida

The Service has prepared two draft maps for Cape San Blas Unit P30/P30P located in Gulf County, Florida. The draft maps for Unit P30/P30P remove approximately 65 acres from the CBRS (52 acres of fastland and 13 acres of associated aquatic habitat) and add approximately 642 acres to the CBRS (61 acres of fastland and 581 acres of associated aquatic habitat). The draft maps remove areas that were inappropriately included within the CBRS in the past and add areas that meet the CBRA criteria for inclusion within the CBRS (16 U.S.C. 3503(g)(1)). The draft maps also reclassify certain areas from System Unit to OPA, and vice versa.

Middlesex and Monmouth Counties, New Jersey

The Service has prepared a draft map for Seidler Beach Unit NJ–02, Cliffwood Beach Unit NJ–03P, and Conaskonk Point Unit NJ–04, located in Middlesex and Monmouth Counties, New Jersey. The draft map also includes three proposed new OPAs, Seidler Beach Unit NJ–02P, Sayreville Unit NJ–15P, and Matawan Point Unit NJ–16P, which are within the vicinity of the existing units. The draft map for Units NJ–02/NJ–02P, NJ–03P, NJ–04, NJ–15P, and NJ–16P, removes approximately 21 acres from the CBRS (15 acres of fastland and 6 acres of associated aquatic habitat) and adds approximately 393 acres to the CBRS (116 acres of fastland and 277 acres of associated aquatic habitat). The draft map removes areas that were inappropriately included within the CBRS in the past. Additionally, a strip of wetlands along the northeastern side of the BRSA facility is removed to allow for the U.S. Army Corps of Engineers to construct a planned levee to protect a wastewater treatment facility from future storm damage. This proposed removal is in accordance with the protocol described in the Mapping Protocol for the Protection of Existing Critical Facilities section above. The draft map also adds areas that meet the CBRA criteria for inclusion within the CBRS (16 U.S.C. 3503(g)(1) and reclassifies an area from System Unit to OPA.

Proposed Additions to the CBRS

The draft maps for Units P30/P30P, P31/P31P, NJ–02/NJ–02P, NJ–03P, NJ–04, NJ–15P, and NJ–16P propose additions to the CBRS, including the creation of three new units that are consistent with a directive in Section 4 of Public Law 109–226 concerning recommendations for expansion of the CBRS. The proposed boundaries depicted on the draft maps for Florida and New Jersey are based upon the best data available to the Service at the time the draft maps were created. Our assessment indicated that any new areas proposed for addition to the CBRS were relatively undeveloped at the time the draft maps were created.

Section 2 of Public Law 106–514 requires that we consider the following criteria when assessing the development status of a potential addition to the CBRS: (1) Whether the density of development is less than one structure per five acres of land above mean high tide (which generally suggests eligibility for inclusion within the CBRS); and (2) whether there is existing infrastructure consisting of: A road, with a reinforced road bed, to each lot or building site in the area; a wastewater disposal system sufficient to serve each lot or building site in the area; electric service for each lot or building site in the area; and a fresh water supply for each lot or building site in the area (which generally suggests ineligibility for inclusion within the CBRS).

If, upon review of the draft maps, interested parties find that any areas proposed for addition to the CBRS are currently developed (according to the criteria established by Section 2 of Public Law 106–514), they may submit supporting documentation of such development to the Service during this public comment period. For any areas proposed for addition to the CBRS on the draft maps, we will consider the density of development and level of infrastructure on the ground as of the close of the comment period on the date listed in the **DATES** section.

Request for Comments

Section 4 of Public Law 109–226 requires the Secretary to provide an opportunity for the submission of public comments. We invite the public to review and comment on the draft maps dated May 16, 2016, for CBRS Units P30/P30P, P31/P31P, NJ–02/NJ–02P, NJ–03P, NJ–04, NJ–15P, and NJ–16P. The Service is specifically notifying the following stakeholders concerning the availability of the draft revised maps: The Chair and Ranking Member of the House of Representatives Committee on Natural Resources; the Chair and Ranking Member of the Senate Committee on Environment and Public Works; the members of the Senate and House of Representatives for the affected areas; the Governors of Florida and New Jersey; other appropriate Federal, State, and local officials; and nongovernmental organizations.

Interested parties may submit written comments and accompanying data through *http://www.regulations.gov,* as described in the **ADDRESSES** section. The Service will also accept digital Geographic Information System (GIS) data files that are accompanied by written comments. Comments regarding specific CBRS unit(s) should reference the appropriate unit number(s) and unit name(s). We must receive comments on or before the date listed in the **DATES** section.

Following the close of the comment period, we will review all comments received on the draft maps and we will make adjustments to the draft maps, as appropriate, based on information received through public comments, updated aerial imagery, CBRA criteria, and objective mapping protocols. We will then prepare final recommended maps to be submitted to Congress. The final recommended maps will become effective only if they are adopted by Congress through legislation.

Availability of Draft Maps and Related Information

The draft maps, unit summaries (containing historical changes and more detailed information regarding proposed changes to the units), and digital boundary data can be accessed and downloaded from the Service's Web site at: *http://www.fws.gov/ecological-services/habitat-conservation/coastal.html,* or via *www.regulations.gov,* where public comments should be submitted. The digital boundary data are available for reference purposes only. The digital boundaries are best viewed using the base imagery to which the boundaries were drawn; this information is printed in the title block of the draft maps. The Service is not responsible for any misuse or misinterpretation of the digital boundary data.

Interested parties may also contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements to view the draft maps at the Service's Headquarters office. Interested parties who are unable to access the draft maps via the Service's Web site or Headquarters office may contact the individual identified in the **FOR FURTHER INFORMATION CONTACT** section, and reasonable accommodations will be made.

Gary Frazer,

Assistant Director for Ecological Services.

[FR Doc. 2016–16100 Filed 7–6–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2015–N115; FXES11130400000EA–123–FF04EF1000]

Endangered and Threatened Wildlife and Plants; Availability of Proposed Low-Effect Habitat Conservation Plans, Lake, County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received five applications for incidental take permits (ITPs) and one renewal of an ITP under the Endangered Species Act of 1973, as amended (Act) in Lake County, Florida. We request public comment on the permit applications and accompanying proposed habitat conservation plans (HCPs), as well as on our preliminary determination that the plans qualify as low-effect under the National Environmental Policy Act (NEPA). To make this determination, we used our environmental action statements and low-effect screening forms, which are also available for review.

DATES: To ensure consideration, please send your written comments by August 8, 2016.

ADDRESSES: If you wish to review the applications and HCPs, you may request documents by email, U.S. mail, or phone (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

Email: northflorida@fws.gov. Use "Attn: Permit number TE96908B–0" as your message subject line for Walton Acquistions FL, LLC; "Attn: Permit number TE96852B–0" for EPC Holdings 808 LLC and Parkview Oaks, LLC; "Attn: Permit number TE96862B–0" for Mattamy Orlando, LLC (Ladd Property); "Attn: Permit number TE96859B–0" for Mattamy Orlando, LLC (NOLA Property); "Attn: Permit number TE96904B–0" for Mattamy Orlando, LLC (Clermont Self Storage Property); and "Attn: Permit number TE105732–2" for Richard Bosserman.

Fax: Field Supervisor, (904) 731–3191, Attn: Permit number [Insert permit number].

U.S. mail: Field Supervisor, Jacksonville Ecological Services Field Office, Attn: Permit number [Insert permit number], U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

In-person drop-off: You may drop off information during regular business hours at the above office address.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, telephone: (904) 731–3121; email: *erin_gawera@fws.gov.*

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), have received five applications for incidental take permits (ITPs) and one renewal of an ITP under the Endangered Species Act of 1973, as amended (Act). Walton Acquisitions FL, LLC requests a 20-year ITP; EPC Holdings 808 LLC and Parkview Oaks, LLC request a 25-year ITP; Mattamy Orlando, LLC (Ladd Property) requests a 5-year ITP; Mattamy Orlando, LLC (NOLA Property) requests a 5-year ITP; Mattamy Orlando, LLC (Clermont Self Storage Property) requests a 5-year ITP; and Richard Bosserman requests a 10-year renewal of ITP permit #TE105732–1. We request public comment on the permit applications and accompanying proposed habitat conservation plans (HCPs), as well as on our preliminary determination that the plans qualify as low-effect under the National Environmental Policy Act (NEPA). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—*i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

Applicants' Proposals

Walton Acquisitions FL, LLC

Walton Acquisitions FL, LLC is requesting take of approximately 6.03 acres (ac) of occupied sand skink foraging and sheltering habitat incidental to construction of a residential project, and they seek a 20-year permit. The 505.99-ac project is located on parcel number 21–20–24–000100000900 within Sections 21, 22, 27, and 28, Township 22 South, and Range 26 East, Lake County, Florida. The project includes construction of a residential development and the associated infrastructure, and landscaping. The applicant proposes to mitigate for the take of the sand skink by the purchase of 12.06 mitigation credits within the Collany Conservation Bank or another Service-approved sand skink bank.

EPC Holdings 808 LLC and Parkview Oaks, LLC

EPC Holdings 808 LLC and Parkview Oaks, LLC request take of approximately 1.58 ac of occupied sand skink foraging and sheltering habitat incidental to construction of a residential project, and they seek a 25-year permit. The 1433-ac project is located on parcels identified with by the Lake County Property Appraiser with the Alternate Key IDs of 1037051, 2804271, 1031028, 1065062, 3029038, 3029020, 3029011, 3859093, 1017301, 2868180, 3854637, 3884096, 1590361, 3860074, 1070015, 3860073, 1070015, and 3859995, 1590817, 3019890, 1027764, 2934590, 2934581, 2934603, and 1065101, within Sections 16, 17, 20, 21, 28, and 29, Township 21 South, and Range 26 East, Lake County, Florida. The project includes construction of a residential development and the associated infrastructure, and landscaping. The applicant proposes to mitigate for the take of the sand skink by the purchase of 3.16 mitigation credits within the Collany Conservation Bank or another Service-approved sand skink bank.

Mattamy Orlando, LLC (Ladd Property)

Mattamy Orlando, LLC is requesting take of approximately 10.65 ac of occupied sand skink foraging and sheltering habitat incidental to construction of a residential project, and they seek a 5-year permit. The 17.75-ac project is located on parcel numbers 342226000200000200, 342226130000C00001, and 342226000200000600 within Section 34, Township 22 South, and Range 26 East, Lake County, Florida. The project includes construction of a residential development and the associated infrastructure, and landscaping. The applicant proposes to mitigate for the take of the sand skink by the purchase of 21.3 mitigation credits within the Hatchineha Conservation Bank or another Service-approved sand skink bank.

Mattamy Orlando, LLC (NOLA Property)

Mattamy Orlando, LLC is requesting take of approximately 9.67 ac of occupied sand skink foraging and sheltering habitat incidental to construction of a residential project, and they seek a 5-year permit. The 541-ac project is located on parcel numbers 27–22–26–00–030–0000–500, 34–22–26–00–010–0000–100, and 35–22–26–00–010–0000–600 within Sections 27, 34, 35 and 36, Township 22 South, and Range 26 East, Lake County, Florida. The project includes construction of a residential development and the associated infrastructure, and landscaping. The applicant proposes to mitigate for the take of the sand skink by the purchase of 19.34 mitigation credits within the Hatchineha Conservation Bank or another Service-approved sand skink bank.

Mattamy Orlando, LLC (Self Storage Property)

Mattamy Orlando, LLC is requesting take of approximately 9.1 ac of occupied sand skink foraging and sheltering habitat incidental to construction of a mixed commercial and residential project, and they seek a 5-year permit. The 16.25-ac project is located on parcel numbers 342226130000A00000, 34226130000000100, 342226130000C00000, and 342226000200000200 within Section 34, Township 22 South, Range 26 East, Lake County, Florida. The project includes construction of a mixed commercial and residential development and the associated infrastructure, and landscaping. The applicant proposes to mitigate for the take of the sand skink by the purchase of 18.2 mitigation credits within the Hatchineha Conservation Bank or another Service-approved sand skink bank.

Richard Bosserman

Richard Bosserman has been approved for take of approximately 1.9 ac of sand skink-occupied habitat incidental to construction of a commercial facility, and seeks a 10-year extension on an existing permit. The 29.6-ac project is located within Section 27, Township 22 South, and Range 26 East, Clermont, Lake County, Florida. The applicant's HCP describes the mitigation and minimization measures the applicant completed to address the effects of the project to the sand skink.

Our Preliminary Determination

We have determined that the applicants' proposals, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in their HCPs. Therefore, we determined that the ITPs for each of the applicants are "low-effect" projects and qualify for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

Next Steps

We will evaluate the HCPs and comments we receive to determine whether the ITP applications meet the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the applications meet these requirements, we will issue ITP numbers TE96908B–0, TE96852B–0, TE96862B–0, TE96859B–0, TE96904B, and TE105732–2. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITPs. If the requirements are met, we will issue the permits to the applicants.

Public Comments

If you wish to comment on the permit applications, HCPs, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: June 29, 2016.

Jay B. Herrington,

Field Supervisor, Jacksonville Field Office, Southeast Region.

[FR Doc. 2016–16079 Filed 7–6–16; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2016–N045; FXRS12610600000–167–FF06R00000]

Upper Great Plains Wind Energy Programmatic Environmental Impact Statement; Record of Decision

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) and the Western Area Power Administration (Western), as joint lead agencies, issued the Upper Great Plains Wind Energy Final Programmatic Environmental Impact Statement (Final PEIS) on May 1, 2015. The Service has decided to implement Alternative 1, as described in the Final PEIS and summarized in the Record of Decision (ROD). Alternative 1 was identified as both the agency-preferred alternative and the environmentally preferred alternative.

ADDRESSES: You may request copies of the Final PEIS and ROD, or more information, by one of the following methods.

Web site: http://plainswindeis.anl.gov/.

U.S. Mail: Kelly Hogan, U.S. Fish and Wildlife Service, Region 6, P.O. Box 25486, Denver, CO 80225–0486.

To view comments on the final PEIS from the Environmental Protection Agency (EPA), or for information on EPA's role in the EIS process, see EPA's Role in the EIS Process under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kelly Hogan, 303–236–4355 (phone) or *Kelly_Hogan@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Record of Decision (ROD) we announce today documents the U.S. Fish and Wildlife Service's (Service) decision to implement the Programmatic Regional Wind Energy Development Evaluation Process (Alternative 1) of the Upper Great Plains Wind Energy Final Programmatic Environmental Impact Statement (Final PEIS) (DOE/EIS–0408), published in the **Federal Register** on May 1, 2015 (80 FR 24914).

In response to an increase in wind energy development in the Upper Great Plains Region (UGP Region), which encompasses all or parts of the States of Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota, the Service (Service) and the Western Area Power Administration (Western) have prepared the Upper Great Plains Wind Energy Final PEIS to streamline their procedures for conducting environmental reviews of wind energy applications by implementing standardized evaluation procedures and identifying measures to address potential environmental impacts associated with wind energy projects in the UGP Region.

The Service and Western cooperatively prepared the PEIS to (1) assess the potential environmental impacts associated with wind energy projects within the UGP Region that may propose placement of project elements on grassland or wetland easements managed by the Service, or that may interconnect to Western's transmission system, and (2) evaluate how environmental impacts would differ under alternative sets of environmental evaluation procedures, best management practices, avoidance strategies, and mitigation measures that the agencies would request project developers to implement, as appropriate, for specific wind energy projects. Four alternatives, including the No Action alternative, were analyzed in the PEIS.

The PEIS analyzes, to the extent practicable, the impacts resulting from development of wind energy projects and the effectiveness of best management practices (BMPs), avoidance of sensitive areas, and mitigation measures in reducing potential impacts. Impacts and mitigation have been analyzed for each environmental resource, and all components of wind energy projects have been addressed, including turbines, transformers, collector lines, overhead lines, access roads, substation installations, and operational and maintenance activities. Many of the impacts resulting from constructing and operating these types of wind energy infrastructure are well known from existing wind energy projects.

In addition to the PEIS, the Service and Western engaged in informal consultation under Section 7 of the ESA in support of the PEIS process. A programmatic biological assessment (Programmatic BA) has been prepared for listed and candidate species occurring in the UGP Region. Development of the Programmatic BA was closely coordinated with the Service's North Dakota Ecological Services Field Office. That office issued a letter of concurrence with the Programmatic BA on July 7, 2015, as a result of this consultation.

The agencies also investigated a programmatic approach to section 106 consultations under the National Historic Preservation Act (NHPA) (54 U.S.C. 300101 *et seq.*). Since section 106 consultations are highly site-specific, it was determined that effective consultation could be accomplished only once an individual project location was defined. However, general avoidance and protection measures for cultural resources and historic properties that would be implemented were identified and included in the analysis.

EPA's Role in the EIS Process

The EPA is charged under section 309 of the Clean Air Act to review all Federal agencies' environmental impact statements (EISs) and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The EIS Database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability each Friday in the **Federal Register**. For more information, see *http://www.epa.gov/compliance/nepa/eisdata.html.*You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

Purpose and Need

The Service's purpose and need for Federal action, as presented in the Draft and Final PEIS, is to streamline the environmental review process for wind energy projects that would unavoidably impact grassland or wetland easements administered by the Service and would therefore require an easement exchange to accommodate wind energy development.

Alternatives

Four alternatives, including the No Action Alternative, were analyzed in the PEIS and are briefly described below. More detailed information on the alternatives may be found in the Final PEIS, which can be accessed from the Web site provided above.

No Action Alternative

Under the No Action Alternative, the Service would continue to consider requests for easement exchanges to accommodate wind energy project requests under the procedures currently used to evaluate and address the environmental impacts associated with wind energy projects. Requests would be processed, reviewed, and evaluated on a case-by-case basis, including separate NEPA, section 7, and section 106 reviews performed for each specific project.

Alternative 1 (Preferred Alternative)—Programmatic Regional Wind Energy Development Evaluation Process for Western and the Service

The Service has decided to adopt a Programmatic Regional Wind Energy Development Process to address requests for Service easement exchanges to accommodate wind energy development. Under Alternative 1, the Service will adopt a standardized structured process for collecting information and evaluating and reviewing environmental impacts of wind energy requests. Best management practices and mitigation measures developed in the PEIS programmatic process would be employed to minimize the potential environmental impacts of wind energy projects. Project-specific NEPA analyses, either environmental assessments (EAs) or streamlined EISs, would tier off (eliminate repetitive discussions of the same issues) the analyses in the Final PEIS as long as the appropriate identified conservation measures were implemented as part of proposed projects. In accordance with 40 CFR 1502.20, these project-specific NEPA documents would summarize the information and issues covered in the Final PEIS or incorporate relevant discussions by reference. This approach would allow for more efficient NEPA documents that would properly focus on local or site-specific issues. The decision to pursue a tiered EA or EIS would be made similar to any other proposal. If the potential for new significant impacts appeared low, then an EA process could be initiated, with the understanding that the identification of any potentially new significant impact would require transition to an EIS process. It is anticipated that the tiered NEPA document in most instances will be an EA. If there appeared to be a potential for new significant environmental impacts, based on the project description and site location, then a tiered EIS process would be initiated.

Project-specific ESA Section 7 consultations would utilize the Programmatic BA so long as the applicable best management practices, minimization measures, mitigation measures, and monitoring requirements established in the Programmatic BA were implemented. Project proponents who could not agree to the requirements in the Programmatic BA would be required to conduct a separate ESA Section 7 consultation with the Service. NHPA section 106 and related tribal consultation would continue unchanged from the present practices; since cultural resources issues are very site specific, it was not possible to address them programmatically beyond including general avoidance and protection measures and committing to the established processes and procedures. The primary objective of Alternative 1 was to collect relevant natural resources information; evaluate the typical impacts of wind energy projects and associated facilities on those resources; identify effective best management practices, minimization measures, and mitigation measures that could reduce impacts; provide information about areas that would be more sensitive to development impacts and encourage avoidance of siting projects in these areas; and have all this material available to support site-specific tiered environmental reviews. The parallel Programmatic BA would similarly expedite the ESA section 7 consultation by having previously established minimization measures, mitigation measures, and monitoring requirements, by species, that if committed to and implemented would constitute compliance with ESA section 7 without a separate consultation.

Alternative 2: Programmatic Regional Wind Energy Development Evaluation Process for Western and No Wind Energy Development Allowed on USFWS Easements

Alternative 2 would not allow easement exchanges to accommodate wind energy facilities.

Alternative 3: Regional Wind Energy Development Evaluation Process for Western and the USFWS, With No Programmatic Requirements

In essence, Alternative 3 is a minimalist approach that would incorporate all mandated environmental review requirements, but would not extend beyond them. Easement exchanges would occur for wind energy projects as presented by developers without consideration of best management practice and other issues to limit environmental impacts.

Decision

The Service has determined that Alternative 1, the agency-preferred alternative, best meets the agency's needs. Alternative 1 is also the environmentally preferred alternative, and would afford the greatest protection for environmental resources that would be impacted by future wind energy projects. Therefore, it is the Service's decision to implement Alternative 1, and use the program defined by that alternative for all applicable future wind energy project affecting Service easements in the UGP Region. This decision is based on the information contained in the Upper Great Plains Wind Energy Final PEIS. The ROD was prepared pursuant to the requirements of the CEQ regulations for implementing NEPA at 42 U.S.C. 1505.2 and the Department of the Interior's implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215).

Matt Hogan,

Deputy Regional Director, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

[FR Doc. 2016–16078 Filed 7–6–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X LLIDB00100.LF1000000.HT0000. LXSS024D0000.241A00]

Notice of Public Meeting: Resource Advisory Council (RAC) to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

DATES: The meeting will be held August 3, 2016, at the Boise District Office, 3948 Development Avenue, Boise, Idaho

83705 beginning at 9:00 a.m. and adjourning by 4:00 p.m. Members of the public are invited to attend. A public comment period will be held from 11:00 a.m. to 11:15 a.m.

FOR FURTHER INFORMATION CONTACT: Larry Ridenhour, Public Affairs Specialist and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, Idaho 83705, telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. During the August meeting the Boise District RAC will receive updates on Soda Fire emergency stabilization and rehabilitation actions, sage-grouse conservation implementation efforts, programmatic assessments for herbicide treatments and vegetation seeding projects and management actions associated with Skinny Dipper Hot Springs. The RAC's subcommittee on the proposed Tri-State Fuel Breaks Project will report on their meetings to date. Agenda items and location may be modified due to changing circumstances. The public may present written or oral comments to members of the Council. At each full RAC meeting, time is provided in the agenda for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. The FIRS is available 24 hours a day, 7 days a week, to leave a message or questions. You will receive a reply during normal business hours.

Dated: June 30, 2016.

Lara Douglas,

District Manager.

[FR Doc. 2016–16080 Filed 7–6–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA942000 L57000000.BX0000 15X L5017AR]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of lands described below are scheduled to be officially filed in the Bureau of Land Management, California State Office, Sacramento, California.

DATES: August 8, 2016.

ADDRESSES: A copy of the plats may be obtained from the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way W–1623, Sacramento, California 95825, 1–916–978–4310. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest a survey must file a notice that they wish to protest with the Chief, Branch of Geographic Services. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Chief, Branch of Geographic Services within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mount Diablo Meridian, California

T. 33 N., R. 5 W., the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 25 and 26, and the metes-and-bounds survey of Tract 37 and certain lots in section 25, accepted June 6, 2016.

San Bernardino Meridian, California

T. 3 N., R. 26 E., the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, the subdivision of section 13, and the survey of the meanders of the full-pool line of a portion of Lake Havasu Reservoir, accepted March 9, 2016.

T. 3 N., R. 27 E., the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 18, and the survey of the meanders of the full-pool line of a portion of Lake Havasu Reservoir, accepted March 9, 2016.

T. 3 S., R. 2 E., the supplemental plat showing parcels 1 through 6 of Tract 9 in section 6, accepted March 28, 2016.

T. 9 N., R. 23 E., the supplemental plat showing a corrected distance measurement on the west boundary of Lot 6 in the NW. ¼ of the NE. ¼ of section 31, accepted April 11, 2016.

T. 10 N., R. 4 E., the dependent resurvey of a portion of the subdivisional lines and a portion of the Camp Cady Military Reservation boundary and the subdivision of section 20, accepted June 21, 2016.

Authority: 43 U.S.C., chapter 3.

Dated: June 22, 2016.

Jon L. Kehler,

(Acting) Chief Cadastral Surveyor, California.

[FR Doc. 2016–16081 Filed 7–6–16; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21349; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before June 18, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by July 22, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 18, 2016. Pursuant to § 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

MISSOURI

St. Louis Independent City

St. Louis Mart and Terminal Warehouse, 1222 Spruce St., St. Louis (Independent City), 16000477

NEBRASKA

Colfax County

Schuyler Downtown Historic District, (Lincoln Highway in Nebraska MPS) Railside Dr., Colfax, 12th, C, D & 10th Sts., Schuyler, 16000478

Douglas County

Allas Apartments, (Apartments, Flats and Tenements in Omaha, Nebraska from 1880–1962 MPS) 1609 Binney St., Omaha, 16000479

Danish Brotherhood in America National Headquarters Building, 3717 Harney St., Omaha, 16000480

Gage County

Beatrice Downtown Historic District, Centered on 6th & Court Sts., Beatrice, 16000481

Saline County

Crete Downtown Historic District, Centered on Main Ave. & 13th St., Crete, 16000482

NEW YORK

Hamilton County

Civilian Conservation Corps Camp S–90 (Speculator), 117 Page St., Lake Pleasant, 16000485

Rensselaer County

Connors, William, Paint Manufacturing Company Building, 669 River St., Troy, 16000486

Westchester County

New York, Westchester and Boston Railway Highbrook Avenue Bridge, Highbrook Ave. between Lincoln & Harmon Aves., Pelham, 16000487

TENNESSEE

Davidson County

Jackson Park Historic District, Brush Hill Ct., Brush Hill Rd., Earlene, Kenwood, Riverwood & E. Riverwood Drs., Eastdale & Plymouth Aves., Nashville, 16000483

VIRGINIA

Bath County

Ashwood School, 5604 Sam Snead Hwy., Hot Springs, 16000484

A request for removal was received for the following resource:

VIRGINIA

Danville Independent City

Dan River Inc. Riverside Division Historic District, Both sides of Dan River roughly bounded by Union St. Dam, Main St. Bridge, Riverside & Memorial Drs., Danville (Independent City), 00000480

Authority: Section 60.13 of 36 CFR part 60.

Dated: June 21, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2016–16061 Filed 7–6–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–21281: PPNEGATEB0, PPMVSCS1Z.Y00000]

Notice of the September to December 2016 Meeting Schedule for the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), notice is hereby given of the September through December 2016 meeting schedule of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee.

Agenda: The Committee will offer expertise and advice regarding the preservation of historic Army buildings at Fort Hancock and Sandy Hook Proving Ground National Historic Landmark into a viable, vibrant community with a variety of uses for visitors, not-for-profit organizations, residents and others. All meetings will begin at 9:00 a.m., with a public comment period at 11:30 a.m. (EASTERN). All meetings are open to the public.

ADDRESSES: The meetings will take place in the Beech Room at the Thompson Park Visitor Center, 805 Newman Springs Road, Lincroft, NJ. Thompson Park is part of the Monmouth County Park System.

DATES: The meetings will take place on the following dates: Thursday, September 8, 2016; Friday, October 14, 2016; and Friday, December 2, 2016.

FOR FURTHER INFORMATION CONTACT: Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, Sandy Hook Unit, 210 New York Avenue, Staten Island, New York 10305, (718) 354–4602, email *GATE_BMD@nps.gov,* or by visiting the park Web site at *https://www.nps.gov/gate.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), the purpose of the Committee is to provide advice to the Secretary of the Interior, through the Director of the National Park Service, on the development of a reuse plan and on matters relating to future uses of certain buildings at the Fort Hancock and Sandy Hook Proving Ground National Historic Landmark which lie within Gateway National Recreation Area.

The Committee Web site, *http://www.forthancock21.org,* includes summaries from all prior meetings. Interested persons may present, either orally or through written comments, opinions, or information for the Committee to consider during the public meeting. Attendees and those wishing to provide comment are strongly encouraged to preregister through the contact information provided. The public will be able to comment at the meetings from 11:30 a.m. to 1:45 p.m. Written comments will be accepted prior to, during, or after the meeting. Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to no more than five minutes per speaker.

All comments will be made part of the public record and will be electronically distributed to all Committee members. Before including your address, telephone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be publicly available. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–16102 Filed 7–6–16; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CAJO–21276; PPNECAJO00 PPMPSPD1Z.Y00000]

Notice of Meeting for Captain John Smith Chesapeake National Historic Trail Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), the National Park Service (NPS) is hereby giving notice that the Advisory Council for the Captain John Smith Chesapeake National Historic Trail (Council) will hold a meeting. The Council will meet for the purpose of discussing segment planning, land and resource management and the National Register of Historic Places eligibility process. Designated through an amendment to the National Trails System Act (16 U.S.C. 1241 to 1251, as amended), the Captain John Smith Chesapeake National Historic trail consists of "a series of water routes extending approximately 3,000 miles along the Chesapeake Bay and the tributaries of the Chesapeake Bay in the States of Virginia, Maryland, Delaware, and in the District of Columbia," tracing the 1607–1609 voyages of Captain John Smith to chart the land and waterways of the Chesapeake Bay. In 2012, the trail was extended to include four river segments closely associated with Captain John Smith's exploration of the Chesapeake Bay, including the north and west branches of the Susquehanna River.

DATES: The Council will meet from 1:00 p.m. to 4:00 p.m. on Monday, August 1, 2016, and from 9:00 a.m. to 2:00 p.m. on Tuesday, August 2, 2016 (EASTERN).

ADDRESSES: The meeting will be held at the Columbia Crossing River Trails Center at Columbia River Park, 41 Walnut Street, Columbia, PA 17512. For more information, please contact the NPS Chesapeake Bay Office, 410 Severn Avenue, Suite 314, Annapolis, MD 21403, telephone (410) 260–2477.

FOR FURTHER INFORMATION CONTACT: Christine Lucero, Partnership Coordinator, telephone (757) 258–8914 or email *Christine_Lucero@nps.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should register via email at *Christine_Lucero@nps.gov* or telephone (757) 258–8914. For those wishing to make comments, please provide a written summary of your comments prior to the meeting. The Designated Federal Official for the Council is Jonathan Doherty, Assistant Superintendent, telephone (410) 260–2477.

Comments will be taken for 30 minutes at the end of the meeting on August 2, 2016, (from 1:30 p.m. to 2:00 p.m.). Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All comments will be made part of the public record and will be electronically distributed to all Council members.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–16103 Filed 7–6–16; 8:45 am]

BILLING CODE 4310–EE–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1071 (Second Review)]

Alloy Magnesium From China; Determination

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the antidumping duty order on alloy magnesium from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on February 1, 2016 (81 FR 5136) and determined on May 6, 2016, that it would conduct an expedited review (81 FR 32346, May 23, 2016).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on June 30, 2016. The views of the Commission are contained in USITC Publication 4618 (June 2016), entitled *Alloy Magnesium from China: Investigation No. 731–TA–1071 (Second Review).*

By order of the Commission.

Issued: June 30, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–16044 Filed 7–6–16; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Dean A. Pinkert did not participate in this review.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–563 and 731–TA–1331–1333 (Preliminary)]

Finished Carbon Steel Flanges From India, Italy, and Spain; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation nos. 701–TA–563 and 731–TA–1331–1333 (Preliminary) pursuant to the Tariff Act of 1930 ("the Act") to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of finished carbon steel flanges from India, Italy, and Spain provided for in subheading 7307.91.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of India. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by August 15, 2016. The Commission's views must be transmitted to Commerce within five business days thereafter, or by August 22, 2016.

DATES: *Effective Date:* June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on June 30, 2016, by Weldbend Corporation (''Weldbend''), Argo, Illinois and Boltex Mfg. Co., L.P. (''Boltex''), Houston, Texas. For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on July 21, 2016, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before July 19, 2016. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 26, 2016, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 30, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–16057 Filed 7–6–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1330 (Preliminary)]

Dioctyl Terephthalate (DOTP) From Korea; Institution of Antidumping Duty Investigation and Scheduling of Preliminary Phase Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping duty investigation No. 731–TA–1330 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of dioctyl terephthalate (''DOTP'') from Korea, provided for in subheading 2917.39.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by August 15, 2016. The Commission's views must be transmitted to Commerce within five business days thereafter, or by August 22, 2016.

DATES: *Effective Date:* June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on June 30, 2016, by Eastman Chemical Company, Kingsport, Tennessee.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with this investigation for 9:30 a.m. on Thursday, July 21, 2016, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov* (DO NOT FILE ON EDIS) on or before Tuesday, July 19, 2016. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 26, 2016, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 30, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–16062 Filed 7–6–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Personal Protective Equipment for General Industry

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Personal Protective Equipment for General Industry," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 8, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1218-002* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Personal Protective Equipment (PPE) for General Industry Standard information collections codified in regulations 29 CFR part 1910, subpart I. The Standard requires that PPE—including equipment for eyes, face, head, and extremities; protective clothing; respiratory devices; and protective shields and barriers—be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact. This ICR covers hazard assessment and verification records and record disclosure during inspections. Occupational Safety and Health Act sections 2(b)(9) and 8(g)(2) authorize this information collection. *See* 29 U.S.C. 651(b)(9) and 657(g)(2).

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 2, 2016 (81 FR 10918).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0205. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Personal Protective Equipment for General Industry.

OMB Control Number: 1218–0205.

Affected Public: Private Sector—business or other for-profits.

Total Estimated Number of Respondents: 3,500,000.

Total Estimated Number of Responses: 601,020.

Total Estimated Annual Time Burden: 1,366,521 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 30, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–16092 Filed 7–6–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Benzene Standard

AGENCY: Office of the Secretary, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA)] sponsored information collection request (ICR) titled, "Benzene Standard," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 8, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201606-1218-002* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Benzene Standard information collection requirements codified in regulations 29 CFR 1910.1028. The Standard requires an Occupational Safety and Health Act (OSH Act) covered employer subject to the Standard to monitor worker exposure, to provide medical surveillance, and to maintain accurate records of worker exposure to benzene. Employers, workers, physicians, and the Government use these records to ensure exposure to benzene in the workplace does not harm workers. OSH Act sections 2(b)(9), 6, and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655, and 657(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0129.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 19, 2016 (81 FR 23008).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0129. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Benzene Standard.

OMB Control Number: 1218–0129.

Affected Public: Private Sector—businesses or other for profits.

Total Estimated Number of Respondents: 12,148.

Total Estimated Number of Responses: 297,672.

Total Estimated Annual Time Burden: 144,909 hours.

Total Estimated Annual Other Costs Burden: $10,811,474.

Dated: June 30, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–16094 Filed 7–6–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Trade Activity Participant Report

AGENCY: Office of the Secretary, DOL.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, "Trade Activity Participant Report" to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 8, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1205-011* or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Trade Activity Participant Report (TAPR) information collection. The TAPR is a data collection and reporting system that supplies critical information on the operation of the Trade Adjustment Assistance program and the outcomes for its participants. The State collects required information for use by Federal, State, and local, agencies to report program management information to Congress and other Federal agencies, and to improve the effectiveness of job training programs. The Trade Act of 1974, as amended authorizes this information collection. *See* 19 U.S.C. 2311.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0392.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 2, 2016 (81 FR 5486).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0392. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Trade Activity Participant Report.

OMB Control Number: 1205–0392.

Affected Public: Individuals or Households and State, Local and Tribal Governments.

Total Estimated Number of Respondents: 12,600.

Total Estimated Number of Responses: 450,200.

Total Estimated Annual Time Burden: 18,500 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 30, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–16093 Filed 7–6–16; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on July 28, 2016, at the U.S. NRC Region II Office, 245 Peachtree Center Avenue NE., 8th floor, Salon A, Atlanta, Georgia 30303–1257.

The meeting will be open to public attendance. Visitors wishing to attend that meeting must report to the NRC Security Desk on the 8th floor.

The agenda for the subject meeting shall be as follows:

Thursday, July 28, 2016—8:00 a.m. Until 2:00 p.m.

The Subcommittee will meet with Region II staff to discuss items of mutual interest. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–5375 or Email: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: June 29, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–16106 Filed 7–6–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9092; NRC–2013–0164]

Reno Creek In Situ Uranium Recovery Project in Campbell County, Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft supplemental environmental impact statement; request for comment.

SUMMARY: By letter dated October 3, 2012, AUC LLC (AUC) submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a new source and byproduct materials license for the proposed Reno Creek *In Situ* Uranium Recovery (ISR) Project (Reno Creek ISR Project) proposed to be located in Campbell County, Wyoming. The NRC is issuing for public comment a Draft Supplemental Environmental Impact Statement (Draft SEIS) for the Reno Creek ISR Project. The Draft SEIS is Supplement 6 to NUREG–1910, "Generic Environmental Impact Statement for *In Situ* Leach Uranium Milling Facilities."

DATES: Submit comments by August 22, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0164. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H8, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jill Caverly, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7674; email: *Jill.Caverly@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0164 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0164.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select

"*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The Draft SEIS (NUREG–1910, Supplement 6) is available in ADAMS under Accession Number ML16181A082. NUREG–1910 is available in ADAMS under Accession Numbers ML091480244 (Volume 1) and ML091480188 (Volume 2).

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0164 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

Under the NRC's environmental protection regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), which implement the National Environmental Policy Act of 1969 (NEPA), preparation of an Environmental Impact Statement (EIS) or supplement to an EIS (SEIS) is required for issuance of a license to possess and use source material for uranium milling (see 10 CFR 51.20(b)(8)).

In May 2009, the NRC staff issued NUREG–1910, "Generic Environmental Impact Statement for *In Situ* Leach Uranium Milling Facilities" (herein referred to as the GEIS). In the GEIS, the NRC assessed the potential environmental impacts from construction, operation, aquifer restoration, and decommissioning of an *in situ* leach uranium milling facility (also known as an ISR facility) located in four specific geographic regions of the western United States. The proposed Reno Creek ISR Project is located within the Wyoming East Uranium Milling Region identified in the GEIS. The Draft SEIS supplements the GEIS and incorporates by reference relevant portions from the GEIS, and uses site-specific information from AUC's license application and independent sources to fulfill the requirements in 10 CFR 51.20(b)(8).

The Draft SEIS for the proposed Reno Creek ISR Project may also be accessed on the Internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/* by selecting "NUREG–1910" and then "Supplement 6," or on the NRC's Reno Creek ISR Project Web page at *http://www.nrc.gov/materials/uranium-recovery/license-apps/reno-creek.html.* Additionally, a copy of the Draft SEIS will be available at the following public libraries: Campbell County Library, 2101 S 4–J Rd., Gillette, WY 82718; Campbell County Library, Wright Branch, 105 Wright Blvd., Wright, WY 82732.

The Draft SEIS was prepared in response to an application submitted by AUC by letter dated October 3, 2012. The applicant proposes the construction, operation, aquifer restoration, and decommissioning of an ISR facility.

The Draft SEIS was prepared by the NRC and its contractor, Southwest Research Institute. The NRC has prepared this Draft SEIS in compliance with NEPA and the NRC's regulations for implementing NEPA (10 CFR part 51).

The proposed Reno Creek ISR Project will be located in Campbell County between the communities of Wright, Edgerton and Gillette and would encompass approximately 2,451 hectares (6,057 acres).

The Draft SEIS is being issued as part of the NRC's process to decide whether to issue a license to AUC pursuant to 10 CFR part 40. In the Draft SEIS, the NRC staff has assessed the potential environmental impacts from the construction, operation, aquifer restoration, and decommissioning of the proposed Reno Creek ISR Project. The NRC staff assessed the impacts of the proposed action and an alternative on land use; historical and cultural resources; visual and scenic resources; climatology, meteorology and air quality; geology, minerals and soils; water resources; ecological resources; socioeconomics; environmental justice; noise; traffic and transportation; public and occupational health and safety; and waste management. Additionally, the Draft SEIS analyzes and compares the benefits and costs of the proposed action.

The NRC staff evaluated site-specific data and information on the Reno Creek ISR Project to determine if AUC's proposed activities and the site characteristics were consistent with those evaluated in the GEIS. NRC then determined which relevant sections of, and impact conclusions in, the GEIS could be incorporated by reference. The NRC staff also determined if additional data or analysis was needed to assess the potential environmental impacts for a specific environmental resource area. The NRC documented its assessments and conclusions in the Draft SEIS.

In addition to the action proposed by AUC, the NRC staff addressed the no-action alternative. The no-action alternative serves as a baseline for comparing the potential environmental impacts of the proposed action.

After weighing the impacts of the proposed action and comparing the alternative, the NRC staff, in accordance with 10 CFR 51.71(f), sets forth its preliminary recommendation regarding the proposed action. Unless safety issues mandate otherwise, the NRC staff preliminarily recommends that the proposed action be approved (*i.e.,* the NRC should issue a source material license for the proposed Reno Creek ISR Project).

The Draft SEIS is being issued for public comment. The public comment period on the Draft SEIS begins with publication of this notice and continues until August 22, 2016. Written comments should be submitted as described in the **ADDRESSES** section of this document. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

Dated at Rockville, Maryland, this 29th day of June, 2016.

For the U.S. Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–16104 Filed 7–6–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–0391; NRC–2016–0019]

Tennessee Valley Authority, Watts Bar Nuclear Plant, Unit 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of the Tennessee Valley Authority (the licensee) to withdraw its license amendment application dated December 15, 2015, for a proposed amendment to Facility Operating License No. NPF–96 issued to the licensee for operation of the Watts Bar Nuclear Plant (WBN), Unit 2. The proposed amendment would have revised Technical Specification (TS) 3.6.12, "Ice Condenser Doors."

DATES: The license amendment application was withdrawn on June 2, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0019 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0019. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Robert Schaaf, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6020, email: *Robert.Schaaf@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the Tennessee Valley Authority's request to withdraw its December 15, 2015, license amendment application (ADAMS Accession No. ML15350A250) for a proposed amendment to Facility Operating License No. NPF–96 issued to the licensee for operation of the WBN, Unit 2, located in Rhea County, Tennessee.

The licensee requested to amend TS 3.6.12, "Ice Condenser Doors," to revise the surveillance frequency of three surveillance requirements (SRs) that perform visual inspection and torque testing on the ice condenser lower inlet doors during the first cycle after receipt of the WBN, Unit 2, Facility Operating License. The purpose of the proposed amendment was to preclude an additional plant shutdown to perform surveillance testing on the ice condenser lower inlet doors based on the projected schedule for startup of WBN, Unit 2. Based on the current schedule for the startup of WBN, Unit 2, the licensee has determined that the three SRs can be performed as specified in TS 3.6.12 without requiring a unit shutdown specifically for the purpose of performing the ice condenser door SRs.

This proposed amendment request was noticed in the **Federal Register** on February 2, 2016 (81 FR 5501). By letter dated June 2, 2016 (ADAMS Accession No. ML16155A071), Tennessee Valley Authority withdrew its license amendment application.

Dated at Rockville, Maryland, this 30th day of June 2016.

For the Nuclear Regulatory Commission.

Tracy Orf,

Acting Chief, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–16105 Filed 7–6–16; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Privacy Act of 1974; Revised System of Records

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of revised system of records.

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the Occupational Safety and Health Review Commission (OSHRC) is revising the notice for Privacy Act system-of-records OSHRC–6. OSHRC's Privacy Act system-of-records notices are published at 72 FR 54301, 54301–03, Sept. 24, 2007, and 71 FR 19556, 19556–67, Apr. 14, 2006, with additional blanket routine uses published at 73 FR 45256, 45256–57, Aug. 4, 2008, and 80 FR 60182, 60182, Oct. 5, 2015.

DATES: Comments must be received by OSHRC on or before August 16, 2016. The revised system of records will become effective on that date, without any further notice in the **Federal Register**, unless comments or government approval procedures necessitate otherwise.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: rbailey@oshrc.gov.* Include "PRIVACY ACT SYSTEM OF RECORDS" in the subject line of the message.
- *Fax:* (202) 606–5417.
- *Mail:* One Lafayette Centre, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457.
- *Hand Delivery/Courier:* Same as mailing address.

Instructions: All submissions must include your name, return address, and email address, if applicable. Please clearly label submissions as "PRIVACY ACT SYSTEM OF RECORDS."

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606–5410, or via email at *rbailey@oshrc.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires federal agencies such as OSHRC to publish in the **Federal Register** notice of any new or revised system of records. As detailed below, OSHRC is revising OSHRC–6, formerly named "Case Management System/Tracking System." The revised notice for OSHRC–6, provided below in its entirety, is as follows.

OSHRC–6

SYSTEM NAME:

E-Filing/Case Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Electronic records are maintained in a private cloud within an Oracle Database, operated by MicroPact at 12901 Worldgate Drive, Suite 800, Herndon, VA 20170. Paper records are maintained by the Office of the Executive Secretary, located at 1120

20th Street NW., Ninth Floor,
Washington, DC 20036–3457.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records covers (1) ALJs; (2) Commission members and their staff; (3) OSHRC employees entering data into the e-filing/case management system, or assigned responsibilities with respect to a particular case; and (4) parties, the parties' points of contact, and the parties' representatives in cases that have been, or presently are, before OSHRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

The electronic records contain the following information: (1) The names of those covered by the system of records and, as to parties, their points of contact; (2) the telephone and fax numbers, business email addresses, and/or business street addresses of those covered by the system of records; (3) the names of OSHRC cases, and information associated with the cases, such as the inspection number, the docket number, the state in which the action arose, the names of the representatives, and whether the case involved a fatality; (4) events occurring in cases and the dates on which the events occurred; (5) documents filed in cases and the dates on which the documents were filed; and (6) the names of OSHRC employees entering data into the e-filing/case management system, or assigned responsibilities with respect to a particular case. The paper records are hard copies of the electronic records in the e-filing/case management system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 661.

PURPOSE(S):

This system of records is maintained for the purpose of processing cases that are before OSHRC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the Blanket Routine Uses discussed in 71 FR at 19558–59, 73 FR at 45256–57, and 80 FR at 60182, when considered appropriate, records in this system may be referred to a bar association or similar federal, state, or local licensing authority for a possible disciplinary action. Also, records may be disclosed to vetted MicroPact employees in order to ensure that the e-filing/case management system is properly maintained. And, in accordance with 29 U.S.C. 661(g), OSHRC's case files may be disclosed to the public for the purpose of inspecting and/or copying the records at OSHRC.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

At MicroPact's secure facility, the information is stored in a database contained on a separate database server behind the application server serving the data. Paper records are stored in the records room and in file cabinets.

RETRIEVABILITY:

Electronic records contained in the case e-filing/case management system may be retrieved by any of the data items listed under "Categories of Records in the System," including docket number, inspection number, any part of a representative's name or the case name, and user. Paper records may be retrieved manually by docket number or case name.

SAFEGUARDS:

Electronic records contained in the e-filing/case management system are safeguarded as follows. Data going across the Internet is encrypted using SSL encryption. Every system is password protected. MicroPact, which stores the data in a private cloud within an Oracle Database, operates its own datacenter that is protected by physical security measures. Only authorized MicroPact employees who have both physical key and key card access to the datacenter can physically access the sites where data is stored. Only authorized and vetted MicroPact employees have access to the servers containing any PII.

The access of parties and their representatives to electronic records in the system is limited to active files pertaining to cases in which the parties are named, or the representatives have entered appearances. The access of OSHRC employees is limited to personnel having a need for access to perform their official functions and is additionally restricted through password identification procedures.

Paper records are maintained in a records room that can only be accessed using a smartcard or a key. Some paper records are also maintained in file cabinets. During duty hours, these records are under surveillance of personnel charged with their custody, and after duty hours, the records are secured behind locked doors. Access to the cabinets is limited to personnel having a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Under Records Disposition Schedule N1–455–90–1, paper case files may be destroyed 20 years after a case closes. Under Records Disposition Schedule N1–455–11–2, electronic records pertaining to those paper case files may be deleted when no longer needed for the conduct of current business.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisory Information Technology Specialist (electronic records contained in the e-filing/case management system) and the Executive Secretary (all other records), OSHRC, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.5 (notification), and 29 CFR 2400.6 (procedures for requesting records).

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.6 (procedures for requesting records).

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW., Ninth Floor, Washington, DC 20036–3457. For an explanation on the specific procedures for contesting the contents of a record, refer to 29 CFR 2400.8 (Procedures for requesting amendment), and 29 CFR 2400.9 (Procedures for appealing).

RECORD SOURCE CATEGORIES:

Information in this system is derived from the individual to whom it applies or is derived from case processing records maintained by the Office of the Executive Secretary and the Office of the General Counsel, or from information provided by the parties who appear before OSHRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: June 29, 2016.

Cynthia L. Attwood,

Chairman.

[FR Doc. 2016–16065 Filed 7–6–16; 8:45 am]

BILLING CODE 7600–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2016–233; CP2016–234]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 8, 2016 (Comment due date applies to all Docket Nos. listed above)

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service has filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The requests(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–233; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 6 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 30, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Natalie R. Ward; *Comments Due:* July 8, 2016.

2. *Docket No(s).:* CP2016–234; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 30, 2016;

Authority: 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* July 8, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–16089 Filed 7–6–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78215]

Order Extending a Temporary Exemption From Compliance With Rules 13n–1 to 13n–12 Under the Securities Exchange Act of 1934

June 30, 2016.

I. Introduction

On March 18, 2016, under its authority in Section 36 of the Securities Exchange Act of 1934 ("Exchange Act"), the Securities and Exchange Commission ("Commission") granted a temporary exemption from compliance with Rules 13n–1 to 13n–12 ("SDR Rules") until June 30, 2016. The Commission also granted an extension of the exemptions from Exchange Act Sections 13(n)(5)(D)(i), 13(n)(5)(F), 13(n)(5)(G), 13(n)(5)(H), 13(n)(7)(A), 13(n)(7)(B), 13(n)(7)(C) and 29(b) provided in the DFA Effective Date Order[1] ("SDR Relief"), as described in the Commission's March 18, 2016 order, such that the SDR Relief will expire on the earlier of (1) the date the Commission grants registration to an SDR and (2) June 30, 2016.[2] The Commission granted the exemptions to help facilitate the potential submission of any SDR applications at the time.

Since March 18, 2016, two entities have filed applications to register with the Commission as SDRs.[3] To allow the Commission additional time to review these applications prior to the compliance date for the SDR Rules and the expiration of the SDR Relief, the Commission is extending the exemptions granted in the March 18, 2016 order.

II. Discussion

The SDR Rules Release[4] states that SDRs were required to be in compliance with the SDR Rules by March 18, 2016. The SDR Rules Release also notes that, absent an exemption, any SDR must be registered with the Commission and in compliance with the federal securities laws and the rules and regulations thereunder (including the applicable Dodd-Frank Act provisions and all of the SDR Rules) by March 18, 2016.[5]

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[1] *See* Temporary Exemptions and Other Temporary Relief, Together with Information on Compliance Dates for New Provisions of the Exchange Act Applicable to Security-Based Swaps, Exchange Act Release No. 64678 (June 15, 2011), 76 FR 36287 (June 22, 2011) (the "DFA Effective Date Order").

[2] *See* Exchange Act Release No. 77400 (Mar. 18, 2016), 81 FR 15599 (Mar. 23, 2016) ("SDR Section 36 Order").

[3] *See* Exchange Act Release No. 77699 (Apr. 22, 2016), 81 FR 25475 (Apr. 28, 2016) ("ICE Trade Vault Notice") and Exchange Act Release No. xxxx (xx, 2016), xx FR xxxx (xx, 2016) ("DDR Notice").

[4] *See* Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14438 (Mar. 19, 2015) ("SDR Rules Release").

Since March 18, 2016, two entities have filed applications to register with the Commission as SDRs. ICE Trade Vault, LLC (''ICE Trade Vault'') filed with the Commission a Form SDR seeking registration as an SDR on March 29, 2016 and amended that form on April 18, 2016. The Commission's notice of ICE Trade Vault's application for registration as an SDR was published in the **Federal Register** on April 28, 2016.[6] DTCC Data Repository (U.S.) LLC (''DDR'') filed with the Commission a Form SDR seeking registration as an SDR on April 6, 2016 and amended that form on April 25, 2016. The Commission's notice of DDR's application for registration as an SDR was published in the **Federal Register** on [X, 2016].[7] Rule 13n–1(c) provides that, within 90 days of the date of the publication of notice of the filing of an application for registration (or within such longer period as to which the applicant consents), the Commission will either grant the registration by order or institute proceedings to determine whether registration should be granted or denied.

Subject to certain exceptions, Section 36 of the Exchange Act[8] authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. The Commission finds that it is necessary and appropriate in the public interest, and consistent with the protection of investors, to grant a temporary exemption from compliance with the SDR Rules and an extension of the SDR Relief. The applications filed by ICE Trade Vault and DDR are the first SDR applications submitted to the Commission and therefore present issues of first impression for the Commission's consideration. Therefore, to allow the Commission additional time prior to the compliance date for the SDR Rules and the expiration of the SDR Relief to review the applications and consider issues related to the first applications for registration of SDRs, the Commission hereby grants, pursuant to Section 36 of the Exchange Act, a temporary exemption from compliance with the SDR Rules and an extension of the SDR Relief until [X, 2016], which is 90 days from publication of notice of DDR's application for registration as a SDR.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–16073 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

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[5] *See id.*, 80 FR at 14456. The SDR Rules Release also notes that all exemptions that the Commission provided in a previous release, including the exemption to provisions in Exchange Act Section 13(n), will expire on the March 18, 2016 compliance date. *See id.* (discussing the ''DFA Effective Date Order).

[6] *See* ICE Trade Vault Notice.

[7] *See* DDR Notice.

[8] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78207; File No. SR–NYSEArca–2016–70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Regarding Use of Rule 144A Securities By the Fidelity Corporate Bond ETF, Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF

June 30, 2016.

On May 11, 2016, NYSE Arca, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the Fidelity Corporate Bond ETF, Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF to consider securities issued pursuant to Rule 144A under the Securities Act of 1933 as debt securities eligible for principal investment. The proposed rule change was published for comment in the **Federal Register** on May 31, 2016.[3] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 15, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 29, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2016–70).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16034 Filed 7–6–16; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77891 (May 24, 2016), 81 FR 34388.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension:

Rule 303; SEC File No. 270–450; OMB Control No. 3235–0505

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 303 (17 CFR 242.303) of Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities and Exchange Act of 1934 (''Act'') (15 U.S.C. 78a *et seq.*).

Regulation ATS sets forth a regulatory regime for ''alternative trading systems'' (''ATSs''), which are entities that carry out exchange functions but which are not required to register as national securities exchanges under the Act. In lieu of exchange registration, an ATS can instead opt to register with the Commission as a broker-dealer and, as a condition to not having to register as an exchange, must instead comply with Regulation ATS. Rule 303 of Regulation ATS (17 CFR 242.303) describes the record preservation requirements for ATSs. Rule 303 also describes how such records must be maintained, what entities may perform this function, and how long records must be preserved.

Under Rule 303, ATSs are required to preserve all records made pursuant to Rule 302, which includes information relating to subscribers, trading summaries, and time-sequenced order information. Rule 303 also requires ATSs to preserve any notices provided to subscribers, including, but not limited to, notices regarding the ATSs operations and subscriber access. For an ATS subject to the fair access requirements described in Rule 301(b)(5)(ii) of Regulation ATS, Rule 303 further requires the ATS to preserve at least one copy of its standards for access to trading, all documents relevant to the ATS's decision to grant, deny, or limit access to any person, and all other documents made or received by the ATS in the course of complying with Rule 301(b)(5) of Regulation ATS. For an ATS subject to the capacity, integrity, and security requirements for automated systems under Rule 301(b)(6) of Regulation ATS, Rule 303 requires an ATS to preserve all documents made or received by the ATS related to its compliance, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results and other similar records. As provided in Rule 303(a)(1), ATSs are required to keep all of these records, as applicable, for a period of at least three years, the first two in an easily accessible place. In addition, Rule 303 requires ATSs to preserve records of partnership articles, articles of incorporation or charter, minute books, stock certificate books, copies of reports filed pursuant to Rule 301(b)(2), and records made pursuant to Rule 301(b)(5) for the life of the ATS.

The information contained in the records required to be preserved by Rule 303 will be used by examiners and other representatives of the Commission, state securities regulatory authorities, and the self-regulatory organizations ("SROs") to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. Without the data required by the Rule, regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

Respondents consist of ATSs that choose to register as broker-dealers and comply with the requirements of Regulation ATS. There are currently 84 respondents. To comply with the record preservation requirements of Rule 303, these respondents will spend approximately 1,260 hours per year (84 respondents at 15 burden hours/respondent). At an average cost per burden hour of $109.60, the resultant total related internal cost of compliance for these respondents is $138,096 per year (1,260 burden hours multiplied by $109.60/hour).

Compliance with Rule 303 is mandatory. The information required by Rule 303 is available only for the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b) (4) (iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2016.

Robert W. Errett,

Deputy Secretary

[FR Doc. 2016–16040 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78218; File No. SR–NYSEArca–2016–82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the JPMorgan Diversified Event Driven ETF Under NYSE Arca Equities Rule 8.600

July 1, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 20, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the JPMorgan Diversified Event Driven ETF under NYSE Arca Equities Rule 8.600. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares[4] on the Exchange:[5] JPMorgan Diversified Event Driven ETF (the "Fund").

The Fund is a series of J.P. Morgan Exchange-Traded Fund Trust ("Trust"), a Delaware statutory trust.[6] J.P. Morgan Investment Management Inc. ("Adviser") will be the investment adviser to the Fund. The Adviser is a wholly-owned subsidiary of JPMorgan Asset Management Holdings Inc., which is a wholly-owned subsidiary of JPMorgan Chase & Co. ("JPMorgan Chase"), a bank holding company. The Adviser will also provide administrative services for and will oversee the other service providers of the Fund (in such capacity, the "Administrator"). SEI Investments Distribution Co. ("Distributor") will be the distributor of the Fund's Shares.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

According to the Registration Statement, the Fund will seek to provide long term, total return. The Fund will seek to achieve its investment objective by employing an event-driven investment strategy, primarily investing in companies that the Adviser believes will be impacted by pending or anticipated corporate or special situation events. In executing this investment strategy, the Fund will seek to capture the price difference between a security's market price and the anticipated value post-event, based on the assumption that an event or catalyst will affect future pricing. It will do so based on its systematic investment process. The Adviser believes it has identified (and will continue to identify) a set of event-driven investment return sources that have a low correlation to each other and traditional markets and have distinct risk and return profiles (each a "return factor").

Each return factor represents a potential source of investment return that results from, among other things, assuming a particular risk or taking advantage of a behavioral bias. The Adviser believes that, in general, the Fund's event-driven investment returns will be attributable to the individual contributions of the various return factors. By employing this return factor based approach, the Fund will seek to provide positive total returns over time while maintaining a relatively low correlation with traditional markets. The exposure to individual return factors may vary based on the market opportunity of the individual return factors. Additional return factors may be identified over time.

Under normal market conditions,[8] the Fund will seek to achieve its investment objective by employing its investment strategy to access certain return factors. For example, the return factors that the Adviser may utilize include, but are not limited to, the following:

—Merger arbitrage—seeks to capitalize on reactions and returns generated by a corporate transaction. The Fund will purchase the common stock of the

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[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[6] The Trust is registered under the 1940 Act. On April 22, 2016, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the 1940 Act relating to the Fund (File Nos. 333–191837 and 811–22903) (the "Registration Statement") to add the Fund. The Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–13761), initially filed March 10, 2010 and most recently amended on December 23, 2015 ("Exemptive Application"); the Exemptive Application was published for notice in IC Release No. 31956 on January 14, 2016. An order ("Exemptive Order") was issued regarding the Exemptive Application on February 19, 2016 (IC Release No. 31990). Investments made by the Fund will comply with the conditions set forth in the Exemptive Order. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement and the Exemptive Application.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as cyber attacks, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

company being acquired and may short the common stock of the acquirer in expectation of profiting from changes in price resulting from merger activity;
—activism tracking—invests in companies that are the target of activist investors;
—share buybacks—attempts to exploit the outperformance of a company engaged in a share buyback program;
—parents and spinoffs—attempts to capture positive performance of a parent company after the spinoff announcement; this typically leads to a revaluation of the company;
—index arbitrage—attempts to profit from the price changes of assets as they are added to or deleted from indices;
—post-reorganization equities—attempts to profit from the mispricing of companies as they emerge from bankruptcy.

The Fund will invest its assets globally to gain exposure to equity securities (across market capitalizations) in developed markets. The Fund may use both long and short positions (achieved primarily through the use of derivative instruments as described below). The Fund generally will maintain a total net long market exposure. However, the Fund may have net long or net short exposure to one or more industry sectors, individual markets and/or currencies.

According to the Registration Statement, the Adviser will make use of derivatives (as described below), in implementing its strategies. Under normal market conditions, the Adviser currently expects that a significant portion of the Fund's exposure will be attained through the use of derivatives in addition to its exposure through direct investment. For example, the Fund may use a total return swap to establish both long and short positions in order to gain the desired exposure rather than physically purchasing and selling short each instrument. Derivatives may also be used to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments and/or for risk management. As a result of the Fund's use of derivatives and to serve as collateral, the Fund may hold significant amounts of U.S. Treasury obligations, including Treasury bills, bonds and notes and other obligations issued or guaranteed by the U.S. Treasury, other short-term investments, including money market funds and foreign currencies in which certain derivatives are denominated.

According to the Registration Statement, the amount that may be invested in any one instrument will vary and generally depend on the return factors employed by the Adviser at that time. However, with the exception of specified investment limitations for certain assets described below, there are no stated percentage limitations on the amount that can be invested in any one type of instrument, and the Adviser may, at times, focus on a smaller number of instruments. Moreover, the Fund will generally be unconstrained by any particular capitalization, style or sector and may invest in any developed region or country.

The Fund will purchase a particular instrument when the Adviser believes that such instrument will allow the Fund to gain the desired exposure to a return factor. Conversely, the Fund will consider selling a particular instrument when it no longer provides the desired exposure to a return factor. In addition, investment decisions will take into account a return factor's contribution to the Fund's overall volatility.

In addition to its main return factors, the Fund may utilize return factors that use debt securities. The Fund may invest, either directly or through financial derivative instruments, debt securities that are subject to a downgrade from investment grade to non-investment grade (also known as high yield/junk bond) status. For example, the Fund may invest in the bonds that have been downgraded while hedging credit risk more broadly by using credit default swaps indices in order to attempt to keep the Fund's exposure market neutral.

Principal Investments

According to the Registration Statement, under normal market conditions, the Fund will invest principally (*i.e.,* more than 50% of the Fund's assets) in the securities and financial instruments described below, which may be represented by derivatives, as discussed below.

The Fund may invest in exchange-listed-and-traded common stocks, preferred stocks,[9] warrants and rights [10] of U.S. and foreign corporations (including emerging market securities); and U.S. and non-U.S. real estate investment trusts ("REITs").[11] Exchange-listed-and-traded common stocks, preferred stocks, warrants and rights of U.S. corporations and U.S. REITs will be traded on U.S. national securities exchanges.

The Fund may invest in exchange-listed and over-the-counter ("OTC") "Depositary Receipts" [12] as described below.

The Fund may invest in the following cash and cash equivalents: Investments in money market funds (for which the Adviser and/or its affiliates serve as investment adviser or administrator), bank obligations,[13] commercial paper,[14] repurchase agreements and short-term funding agreements.[15]

The Fund may invest in corporate debt.[16]

In addition to money market funds referenced above, the Fund may invest in shares of non-exchange-traded investment company securities including investment company securities for which the Adviser and/or its affiliates may serve as investment adviser or administrator, to the extent permitted by Section 12(d)(1)[17] of the 1940 Act and the rules thereunder.

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[9] Preferred stock is a class of stock that generally pays a dividend at a specified rate and has preference over common stock in the payment of dividends and in liquidation (U.S. and non-U.S., including emerging markets).

[10] Rights are securities, typically issued with preferred stock or bonds, that give the holder the right to buy a proportionate amount of common stock at a specified price (U.S. and non-U.S., including emerging markets).

[11] REITs are pooled investment vehicles which invest primarily in income producing real estate or real estate related loans or interest.

[12] Depositary Receipts include American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs") and European Depositary Receipts ("EDRs"). ADRs are receipts typically issued by an American bank or trust company that evidence ownership of underlying securities issued by a foreign corporation. EDRs are receipts issued by a European bank or trust company evidencing ownership of securities issued by a foreign corporation. GDRs are receipts issued throughout the world that evidence a similar arrangement. ADRs, EDRs and GDRs may trade in foreign currencies that differ from the currency the underlying security for each ADR, EDR or GDR principally trades in. Generally, ADRs, in registered form, are designed for use in the U.S. securities markets. EDRs, in registered form, are used to access European markets. GDRs, in registered form, are tradable both in the United States and in Europe and are designed for use throughout the world. No more than 10% of the net assets of the Fund will be invested in ADRs that are not exchange-listed.

[13] Bank obligations include the following: Bankers' acceptances, certificates of deposit and time deposits. Bankers' acceptances are bills of exchange or time drafts drawn on and accepted by a commercial bank. Maturities are generally six months or less. Certificates of deposit are negotiable certificates issued by a bank for a specified period of time and earning a specified return. Time deposits are non-negotiable receipts issued by a bank in exchange for the deposit of funds.

[14] Commercial paper consists of secured and unsecured short-term promissory notes issued by corporations and other entities. Maturities generally vary from a few days to nine months.

[15] Short-term funding agreements are agreements issued by banks and highly rated U.S. insurance companies such as Guaranteed Investment Contracts ("GICs") and Bank Investment Contracts ("BICs").

[16] The Adviser expects that, under normal market conditions, the Fund will invest at least 75% of its corporate debt securities in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries.

The Fund may invest in exchange traded funds ("ETFs").[18]

The Fund may purchase and sell futures contracts on indexes of securities.

The Fund may invest in swaps as follows: Credit default swaps ("CDSs"), CDS indices and total return swaps on equity securities, equity indexes, fixed income securities, and fixed income futures.

The Fund may invest in forward and spot currency transactions.[19] Such investments consist of non-deliverable forwards ("NDFs"), foreign forward currency contracts, and spot currency transactions.

The Fund may invest in OTC and exchange-traded call and put options on equities, fixed income securities and currencies or options on indexes of equities, fixed income securities and currencies.

The Fund may invest in U.S. Government obligations, which may include direct obligations of the U.S. Treasury, including Treasury bills, notes and bonds, all of which are backed as to principal and interest payments by the full faith and credit of the United States, and separately traded principal and interest component parts of such obligations that are transferable through the Federal book-entry system known as Separate Trading of Registered Interest and Principal of Securities ("STRIPS") and Coupons Under Book Entry Safekeeping ("CUBES").

Other Investments

While the Fund, under normal market conditions, will invest at least fifty percent (50%) of its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may invest in U.S. and non-U.S. convertible securities, which are bonds or preferred stock that can convert to common stock.

The Fund may invest in reverse repurchase agreements.

The Fund may invest in sovereign obligations, which are investments in debt obligations issued or guaranteed by a foreign sovereign government or its agencies, authorities or political subdivisions.

The Fund may invest no more than 5% of its assets in equity and debt securities that are restricted securities (Rule 144A securities), in addition to Rule 144A securities deemed illiquid by the Adviser, as referenced below.

Under normal market conditions, the Fund may invest no more than 5% of its assets in OTC common stocks, preferred stocks, warrants, rights and contingent value rights ("CVRs") of U.S. and foreign corporations (including emerging market securities).

Other Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[20]

The Fund may invest in other investment companies to the extent permitted by Section12(d)(1) of the 1940 Act and rules thereunder and/or any applicable exemption or exemptive order under the 1940 Act with respect to such investments.

The Fund may invest in securities denominated in U.S. dollars, major reserve currencies, and currencies of other countries in which the Fund may invest.

The Fund may invest in both investment grade and high yield debt securities.

The Fund intends to qualify for and to elect treatment as a separate regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code.[21] Furthermore, the Fund may not concentrate investments in a particular industry or group of industries, as concentration is defined under the 1940 Act, the rules or regulations thereunder or any exemption therefrom, as such statute, rules or regulations may be amended or interpreted from time to time.[22]

The Fund is a diversified series of the Trust. The Fund intends to meet the diversification requirements of the 1940 Act.[23]

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[24]

The Fund's Use of Derivatives

The Fund proposes to seek certain exposures through transactions in the specific derivative instruments described above. The derivatives to be used are futures, swaps, NDFs, foreign forward currency contracts, and call and put options. Derivatives, which are instruments that have a value based on another instrument, exchange rate or index, may also be used as substitutes for securities in which the Fund can invest. The Fund may use these derivative instruments to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments and/or for risk management.

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[17] 15 U.S.C. 80a–12(d)(1).

[18] The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.*, 2X, −2X, 3X or −3X) ETFs.

[19] The Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion as determined by the Bank for International Settlements ("BIS") Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD $1 billion. For a list of eligible BIS currencies, see *www.bis.org*.

[20] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[21] 26 U.S.C. 851 *et seq.*

[22] The Registration Statement states that, for purposes of the Fund's fundamental investment policy regarding industry concentration, "to concentrate" generally means to invest more than 25% of the Fund's total assets, taken at market value at the time of investment.

[23] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[24] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will segregate or "earmark" assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the "Board") and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.[25] Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

Creation and Redemption of Shares

According to the Registration Statement, the consideration for a purchase of Creation Units will generally be cash, but may consist of an in-kind deposit of a designated portfolio of equity securities and other investments (the "Deposit Instruments") and an amount of cash computed as described below (the "Cash Amount") under some circumstances. The size of a Creation Unit will be 100,000 Shares and will be subject to change. The Cash Amount together with the Deposit Instruments, as applicable, are referred to as the "Portfolio Deposit", which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

In the event the Fund requires Deposit Instruments and a Cash Amount in consideration for purchasing a Creation Unit, the function of the Cash Amount is to compensate for any differences between the net asset value ("NAV") per Creation Unit and the Deposit Amount (as defined below). The Cash Amount would be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the "Deposit Amount," which is an amount equal to the aggregate market value of the Deposit Instruments. If the Cash Amount is a positive number (the NAV per Creation Unit exceeds the Deposit Amount), the "Authorized Participant" (as defined below) will deliver the Cash Amount. If the Cash Amount is a negative number (the NAV per Creation Unit is less than the Deposit Amount), the Authorized Participant will receive the Cash Amount. The Administrator, through the National Securities Clearing Corporation ("NSCC"), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time ("E.T.")), the list of the names and the required number of shares of each Deposit Instrument to be included in the current Portfolio Deposit (based on information at the end of the previous business day), as well as information regarding the Cash Amount for the Fund. Such Portfolio Deposit is applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of the Deposit Instruments and Cash Amount required for the Portfolio Deposit for the Fund changes as rebalancing adjustments and corporate action events are reflected from time to time. In addition, the Trust reserves the right to accept a basket of securities or cash that differs from Deposit Instruments or to permit the substitution of an amount of cash (*i.e.*, a "cash in lieu" amount) to be added to the Cash Amount to replace any Deposit Instrument which may, among other reasons, not be available in sufficient quantity for delivery, not be permitted to be re-registered in the name of the Trust as a result of an in-kind creation order pursuant to local law or market convention or for other reasons as described in the Registration Statement, or which may not be eligible for trading by a Participating Party (defined below). In light of the foregoing, in order to seek to replicate the in-kind creation order process, the Trust expects to purchase the Deposit Instruments represented by the cash in lieu amount in the secondary market.

In addition to the list of names and numbers of securities constituting the current Deposit Instruments of a Portfolio Deposit, the Administrator, through the NSCC, also will make available on each business day, the estimated Cash Component adjusted through the close of the trading day.

Procedures for Creation of Creation Units

To be eligible to place orders with the Distributor to create Creation Units of the Fund, an entity or person either must be (1) a "Participating Party," *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC; or (2) a Depositary Trust Company ("DTC") Participant, which, in either case, must have executed an agreement with the Distributor (as it may be amended from time to time in accordance with its terms) ("Participant Agreement") (discussed below). A Participating Party and DTC Participant are collectively referred to as an "Authorized Participant." All orders to create Creation Units must be received by the Distributor no later than the closing time of the regular trading session on the Exchange ("Closing Time") (ordinarily 4:00 p.m. E.T.), in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the Fund as determined on such date.

Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor, only on a business day and only through an Authorized Participant. The Trust will not redeem Shares in amounts less than Creation Units.

Although the Fund will generally pay redemption proceeds in cash, there may be instances when it will make redemptions in-kind. In these instances, the Administrator, through NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.) on each day that the Exchange is open for business, the identity of the Fund's assets and/or an amount of cash that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Unless cash redemptions are permitted or required for the Fund, the redemption proceeds for a Creation Unit generally consist of "Redemption Instruments" as announced by the Administrator on the business day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Redemption Instruments, less the redemption transaction fee and variable fees described below.

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[25] To mitigate leveraging risk, the Adviser will segregate or "earmark" liquid assets or otherwise cover the transactions that may give rise to such risk.

Should the Redemption Instruments have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the Trust equal to the differential plus the applicable redemption transaction fee will be required to be arranged for by or on behalf of the redeeming shareholder. The Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Redemption Instruments.[26]

Valuation Methodology for Purposes of Determining Net Asset Value

The NAV of Shares, under normal market conditions, will be calculated each business day as of the close of the Exchange, which is typically 4:00 p.m. E.T. On occasion, the Exchange will close before 4:00 p.m. E.T. When that happens, NAV will be calculated as of the time the Exchange closes. The price at which a purchase of a Creation Unit is effected will be based on the next calculation of NAV after the order is received in proper form.

Securities for which market quotations are readily available will generally be valued at their current market value. Other securities and assets, including securities for which market quotations are not readily available or market quotations are determined not to be reliable; or, if their value has been materially affected by events occurring after the close of trading on the exchange or market on which the security is principally traded but before the Fund's NAV is calculated, may be valued at fair value in accordance with policies and procedures adopted by the Trust's Board of Trustees. Fair value represents a good faith determination of the value of a security or other asset based upon specifically applied procedures. Fair valuation may require subjective determinations.

U.S. exchange-traded common stocks, preferred stocks, warrants, rights, REITs, and Depositary Receipts will be valued at the last sale price or official market closing price on the primary exchange on which such security trades.

Exchange-traded non-U.S. equity securities will be valued at the last sale price or official market closing price on the primary exchange on which such security trades.

OTC equity securities will be priced utilizing market quotations provided by approved pricing services or by broker quotation. For OTC warrants, rights and CVRs, if no pricing service or broker quotation is available, then the warrant, right or CVR will be valued intrinsically based on the terms of issuance.

Shares of non-exchange-traded open-end investment companies will be valued at their current day NAV published by the relevant fund. ETFs will be valued at the last sale price or official market closing price on the primary exchange on which such ETF trades.

CDS and total return swaps will be priced utilizing market quotations provided by approved pricing services.

Forward and spot currency transactions will be valued based on foreign exchange rates obtained from an approved pricing service, using spot and forward rates available at the time NAV of the Fund is calculated.

Commercial paper will be valued at prices supplied by approved pricing services which is generally based on bid-side quotations.

Options traded on U.S. exchanges will be valued at the composite mean price, using the National Best Bid and Offer quotes ("NBBO") on the valuation date. NBBO consists of the highest bid price and lowest ask price across any of the exchanges on which an option is quoted.

Options traded on foreign exchanges will be valued at the settled price on the valuation date, or if no settled price is available, at the last sale price available prior to the calculation of the Fund's NAV.

Futures traded on U.S. and foreign exchanges are valued at the settled price, or if no settled price is available, at the last sale price as of the close of the exchanges on the valuation date.

OTC derivatives will be priced utilizing market quotations provided by approved pricing services.

In addition, non-Western Hemisphere equity securities or derivatives involving non-Western Hemisphere equity reference obligations will normally be subject to adjustment (fair value) each day by applying a fair value factor provided by approved pricing services to the values obtained as described above.

Convertible securities will be valued at prices supplied by approved pricing services which is generally based on bid-side quotations.

Corporate debt securities will be valued at prices supplied by approved pricing services which is generally based on bid-side quotations.

Bank obligations, short-term funding agreements, repurchase agreements, reverse repurchase agreements, U.S. Government obligations, sovereign obligations, and Rule 144A securities will be valued at prices supplied by approved pricing services which is generally based on bid-side quotations.

Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value

On each business day, before commencement of trading in Fund Shares on NYSE Arca, the Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.

In order to provide additional information regarding the intra-day value of Shares of the Fund, the NYSE Arca or a market data vendor will disseminate every 15 seconds through the facilities of the Consolidated Tape Association or other widely disseminated means an updated Intra-Day Indicative Value ("IIV") for the Fund as calculated by a third party market data provider.

A third party market data provider will calculate the IIV for the Fund. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- NDFs and foreign forward currency contracts may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- CDS and CDS indices swaps may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange-listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.

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[26] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

- OTC options may be valued intraday through option valuation models (*e.g.*, Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

Disclosed Portfolio

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a "cash in lieu" amount when the Fund processes purchases or redemptions of creation units in-kind.

Availability of Information

The Fund's Web site (*www.jpmorganfunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV or mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[27] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session (normally, 9:30 a.m. to 4:00 p.m., E.T.) on the Exchange, the Adviser will disclose on the Fund's Web site the Disclosed Portfolio for the Fund as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[28]

The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.*

Quotation and last sale information for the Shares and for portfolio holdings of the Fund that are U.S. exchange listed, including common stocks, preferred stocks, warrants, rights, ETFs, REITs, and U.S. exchange-traded ADRs will be available via the Consolidated Tape Association ("CTA") high speed line. Quotation and last sale information for such U.S. exchange-listed securities, as well as futures will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Quotation and last sale information for non-U.S. equity securities (including GDRs and EDRs) will be available from the exchanges on which they trade and from major market data vendors, as applicable. Price information for OTC common stocks (including certain OTC ADRs), preferred stocks, warrants, rights and CVRs will be available from one or more major market data vendors or broker dealers in the securities.

Quotation information for OTC options, cash equivalents, swaps, money market funds, non-exchange-listed investment company securities (other than money market funds), Rule 144A securities, U.S. Government obligations, U.S. Government agency obligations, sovereign obligations, corporate debt, and reverse repurchase agreements may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services. Forwards and spot currency price information will be available from major market data vendors.

In addition, the IIV, which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[29] The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the approximate value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[30] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares of the Fund inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

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[27] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[28] Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[29] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds.

[30] *See* NYSE Arca Equities Rule 7.12.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [31] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[32] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange, or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-listed equity securities (including Depositary Receipts, ETFs, REITs, common and preferred stocks, warrants, rights, certain futures, and certain exchange-traded options with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[33] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options shall consist of futures contracts or options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the

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[31] 17 CFR 240 10A–3.

[32] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[33] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of the Fund will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[34] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange, or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-listed equity securities, certain futures, and certain exchange-traded options with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options shall consist of futures contracts or options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the respective Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. On a daily basis, the Fund will disclose on its Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Quotation and last sale information for the Shares and for portfolio holdings of the Fund that are U.S. exchange listed, including common stocks, preferred stocks, warrants, rights, ETFs, REITs, and U.S. exchange-traded ADRs will be available via the CTA high speed line. Quotation and last sale information for such U.S. exchange-listed securities, as well as futures will be available from the exchange on which they are listed. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Quotation and last sale information for non-U.S. equity securities will be available from the exchanges on which they trade and from major market data vendors.

Quotation information for OTC options, cash equivalents, swaps, money market funds, Rule 144A securities, U.S. Government obligations, U.S. Government agency obligations, sovereign obligations, corporate debt, and reverse repurchase agreements may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services. Forwards and spot currency price information will be available from major market data vendors.

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[34] 15 U.S.C. 78f(b)(5).

The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares of the Fund and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio for the Fund, and quotation and last sale information for the Shares of the Fund.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that holds fixed income and equity securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–82. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–82 and should be submitted on or before July 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Brent J. Fields,

Secretary.

[FR Doc. 2016–16108 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

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[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78200; File No. SR–NASDAQ–2016–091]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Professionals Order Counting

June 30, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NASDAQ Options Market LLC (“NOM”) Rules at Chapter I, Section 1, entitled “Definitions,” to add specificity to the definition of a Professional with respect to the manner in which the volume threshold will be calculated by the Exchange.

The text of the proposed rule change is available on the Exchange’s Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of “Professional” at Chapter I, Section 1(49) to specify the manner in which the Exchange calculates orders to determine if an order should be treated as Professional.

Background

The definition of the term Professional at Chapter I, Section 1(48), currently states, “any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).” In order to properly represent orders entered on the Exchange Participants are required to indicate whether Public Customer[3] orders are “Professional” orders.”[4] To comply with this requirement, Participants are required to review their Public Customers’ activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Public Customer orders or Professional orders.[5]

The Exchange accepts orders routed from other markets that are marked Professional. The designation of Professional or Professional order does not result in any different treatment of such orders for purposes of Exchange rules concerning away market protection. That is, all non-broker or dealer orders, including those that meet the definition of Professional orders, are treated equally for purposes of Exchange away market protection rules.[6] The Exchange continues to believe that identifying Professional accounts based upon the average number of orders entered in qualified accounts is an appropriately objective approach to reasonably distinguish such persons and entities from retail investors or market participants.

Proposal

The Exchange proposes to count each order entered by a Professional toward the number of orders, regardless of the options exchange to which the order was routed in determining Professional orders.[7]

Cancel and Replace

A cancel and replace order is a type of order that replaces a prior order. The Exchange believes that the second order (the replacement order) should be counted as a new order. With respect to “single-strike algorithms,” which are a series of cancel and replace orders in an individual strike which track the NBBO, these orders shall be counted as new orders.[8] The Exchange believes that because the Public Customer is specifically instructing the executing broker in the “single-strike algorithm” scenario to cancel and replace these orders. This type of activity is akin to market making in a Public Customer account and should be counted, as a new order.

Parent/Child Orders

An order that converts into multiple subordinate orders to achieve an execution strategy[9] shall be counted as one order per side and series, even if the order is routed away. An order that cancels and replaces a resulting subordinate order and results in multiple sides/series shall be counted as a new order on each side and series. For purposes of counting Public Customer orders, the manner in which the Public Customer submitted the order and whether the order was on the same side and series will determine if the order will count as one order. If one Public Customer order on the same side and series is subsequently broken-up by a broker into multiple orders for purposes of execution or routed away, this order will count as one order. The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional designation.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term “Public Customer” means a person that is not a broker or dealer in securities. *See* Chapter I, Section 1(49).

[4] The Exchange utilizes a special order origin code for Professional orders.

[5] Orders for any Public Customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional orders for the next calendar quarter. Members are required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While members are only required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a Public Customer for which orders are being represented as Public Customer orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the member and the member will be required to change the manner in which it is representing the Public Customer’s orders within five days.

[6] *See* Exchange Rules at Chapter VI, Section 11, Chapter XII, Sections 2 and 3.

[7] All order types count toward the 390 orders on average per day.

[8] Cancel messages do not count as an order.

[9] An order which is placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities that is broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer. Strategies include volatility orders, for example.

In order to make clear when orders will count as new orders, the Exchange offers the following scenarios as examples.

- The Exchange proposes to count multiple orders that were submitted by the member as separate orders as multiple orders.
- The Exchange proposes to count a single order submitted by a member, which was automatically executed in multiple parts by the trading system, as one order, because the member did not intervene to create multiple orders. Another example is where an order was entered in the trading system and only partially filled, the order would count as one order. The subsequent fills, which could be multiple executions, would not count as additional orders in determining the 390 limit. The manner in which the order is ultimately executed, as one order or multiple orders, should not itself determine whether the activity is that of a Professional; also the member did not intervene in that circumstance.
- The Exchange proposes to not count an order which reprices, for example because of a locked and crossed market, as a new order because the member did not intervene.
- The Exchange proposes to count orders, which result in multiple orders due to cancel and replacement orders, as new orders. This is because in this situation the member did intervene to create the subsequent orders.
- The Exchange proposes to count an order submitted by the Public Customer as a single order, on the same side and series, as a single order despite the fact that a broker broke-up the order into multiple orders for purposes of execution.

The Exchange notes that other options exchanges have issued notices which describe the manner in which those Exchanges believe thresholds should be computed for determining if an order qualifies as a Professional order.[10] The Exchange believes that there is industry confusion as to which orders count toward the 390 contract threshold. The Exchange's proposal is intended to provide clarity and to continue to promote consistency in the treatment of orders as Professional orders.

Below are some examples of the calculation of Professional orders.

Example #1:

A Public Customer has an order to buy 100 calls at a volatility level of 35. The order then generates a child order resulting in a 1.00 bid for 100 options which is sent to exchange A. After the underlying stock price ticks up 2 cents the child order is then adjusted to reflect a 35 level volatility which in this case (50 delta) results in a 1.01 bid sent to Exchange A replacing the current 1.00 bid.

In determining the number of orders that attribute to the 390 order count, in this case, because the child order is being canceled and replaced in the "same series" this would only count as one (1) order for purposes of Professional designation calculation.

Example #2:

A Public Customer has an order to buy 20k Vega at a 35 volatility level in symbol XYZ. The order then generates 50 child orders across different strikes. Throughout the day those 50 orders are adjusted as the stock moves resulting in the replacement of child orders to the tune of 5 times per order (50 x 5 cancels) resulting in 250 total orders generated to Exchange A.

In determining the number of orders that attribute to the 390 order count, in this case, because the child orders generated are across multiple series it would be necessary to count all 250 orders.

In addition to the above examples, the Exchange provides the below chart to demonstrate the manner in which it will count orders.

Single strike activity	Singular	Multiple
Public Customer order posted to 1 SRO Order Book	x	
Public Customer order posted to Multiple SRO Order Books simultaneously	x	
Cancel/Replace Activity		x
Cancel/Replace Activity tracking NBBO		x

Singular—counts as a single order towards the 390 count

Multiple—each order applies towards the 390 count

The Exchange proposes to implement this rule on July 1, 2016 to provide market participants with advance notice for their quarterly calculations. The Exchange will issue an Options Trader Alert in advance to inform market participants of such date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting the consistent application of its rules by further defining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) for purposes of determining the Professional designation. Furthermore, the Exchange believes that specifying the manner in which the 390 threshold will be calculated within its Rules will provide members with certainty and provide them with insight as they conduct their own quarterly reviews for purposes of designating orders.

The Exchange believes that counting all orders toward the number of orders, regardless of the options exchange to which the order was routed, will promote the consistent application of its rules by making clear that all order types shall be counted as well as all orders for the purpose of determining whether the definition of Professional has been met.

Cancel and Replace

With respect to determining the Professional designation, a cancel and replace order that replaces a prior order shall be counted as a second order. An order that is filled partially or in its entirety or is a replacement order that is automatically canceled or reduced by the number of contracts that were executed will not count as second order because it was not replaced.[13] The Exchange believes that counting the replacement order as a second order is consistent with Exchange Rules because the replacement order is viewed as a new order with its own unique identifier.

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[10] *See* NYSE Arca, Inc.'s and NYSE MKT LLC's Joint Regulatory Bulletin (RBO–15–03 and RBO–15–06, respectively) dated September 9, 2015; CBOE's Regulatory Circulator (RG10–126) dated December 1, 2010; and the International Securities Exchange LLC's Regulatory Information Circular (2009–179) dated June 23, 2009.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

The Exchange believes that counting cancel and replace orders with "single-strike algorithms," which are a series of cancel and replace orders in an individual strike which track the NBBO, as new orders is consistent with the Act because the Public Customer is specifically instructing the executing broker in the "single-strike algorithm" scenario to cancel and replace these orders. Tracking the NBBO[14] is akin to market making on the Exchange in a Public Customer account and should be counted as new orders. The Exchange believes that the Public Customers order designation should be reserved for retail Public Customers.

Parent/Child Orders

The Exchange's adoption of the Professional order was to treat orders in listed options per day on average during a calendar month in his or her own beneficial account differently from Public Customer orders for purposes of pricing.[15] For this reason, the Exchange is adopting rules concerning the computation of orders which convert into multiple subordinate orders for the purpose of determining the Professional designation. The Exchange's proposal to count multiple subordinate orders that achieve an execution strategy as one order per side and series and count an order that cancels and replaces a resulting subordinate order and results in multiple sides/series as a new order is consistent with the Act, because the Exchange is distinguishing where the member is actively entering orders that result in multiple orders and canceling and replacing orders that result in multiple orders versus where the member had no control of the resulting executions. Allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional order designation. The same side of market distinction protects retail Public Customers. This practice is typically the type of transaction Public Customers execute versus a Professional trader. Multiple related orders resulting from a large order filled in part, or an order which is cancelled and replaced several times are considered part of a related order. The Exchange does not desire to count large orders filled in part as multiple orders because the member did not intervene in the outcome of the execution. An order that results in several separate and unrelated orders would be counted as multiple orders because the member intervened in this circumstance.

The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the computation of the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional designation. The Exchange notes that other options exchanges have issued notices describing the manner in which they believe that Professional order should be counted when determining if an order qualifies as a Professional order.[16] The Exchange believes that there is confusion as to which orders count toward the 390 contract threshold. The Exchange proposes to provide clarity to its Rules with specific guidance as to the computation of Professional orders, which it believes will promote consistency in the treatment of orders as Professional orders. The Exchange believes that this proposed guidance will promote consistency and permit the proper calculation of options orders to prevent members with high volume from receiving benefits reserved for Public Customer orders. The Professional designation focuses specifically on the number of orders generated.

NOM's System executes order based on Price-Time priority, however, a marketplace advantage afforded to Public Customer orders on the Exchange is that members are generally not assessed transaction fees for the execution of Public Customer orders. The purpose of these marketplace advantages is to attract retail order flow to the Exchange by leveling the playing field for retail investors over market Professionals.[17] The Exchange believes that permitting certain types of orders to be counted as a single order and other types of orders to be counted as multiple orders is consistent with the original intent of the Professional designation which was to continue to provide Public Customer accounts with marketplace advantages and distinguish those accounts non-Professional retail investors from the Professionals accounts some non-broker-dealer individuals and entities have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities.[18]

Finally, the proposed guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional order volume. The Exchange's Rules may be similar to notices issued by NYSE Arca, Inc, NYSE MKT LLC ("NYSE MKT") and International Securities Exchange LLC ("ISE").

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the Exchange will uniformly apply the rules to calculate volume on all members in determining Professional orders. The designation of Professional orders would not result in any different treatment of such orders for purposes of the Exchange's Rules concerning order protection or routing to away exchanges. Also, SIFMA supports the guidance issued by NYSE Arca and NYSE MKT. The guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional order volume.

The Exchange is adopting similar counting methods the Exchange believes is currently being utilized by NYSE

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[13] *See* Exchange Rules at Chapter VI, Section 1(e)(1). Cancel-replacement order shall mean a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained.

[14] Tracking the NBBO shall mean any parent order that consumes any self-regulatory organization order book data feed, or the OPRA feed, to generate automated child orders, and move with, or follow the Bid or Offer of the series in question.

[15] *See* NOM Rules at Chapter VI, Section 10 and Chapter XV, Section 2.

[16] *See* NYSE Arca, Inc.'s and NYSE MKT LLC's Joint Regulatory Bulletin (RBO–15–03 and RBO–15–06, respectively) dated September 9, 2015; The Chicago Board Options Exchange, Incorporated's Regulatory Circulator (RG10–126) dated December 1, 2010; and the International Securities Exchange LLC's Regulatory Information Circular (2009–179) dated June 23, 2009.

[17] Market Professionals have access to sophisticated trading systems that contain functionality not available to Public Customers, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously and order and risk management tools.

[18] For example, some broker-dealers provided their Professional customers with multi-screened trading stations equipped with trading technology that allows the trader to monitor and place orders on all six options exchanges simultaneously. These trading stations also provide compliance filters, order managements tools, the ability to place orders in the underlying securities, and market data feeds.

MKT, NYSE ARCA and ISE related to designation of Professional orders.

Counting All Orders

The Exchange believes that counting all orders entered by a Professional toward the number of orders, regardless of the options exchange to which the order was routed, does not create an undue burden on intra-market competition because this proposed rule change will be consistently applied to all members in determining Professional orders.

Cancel and Replace

The Exchange believes that its application of cancel and replace orders does not create an undue burden on intra-market competition because this application is consistent with Exchange Rules, where the replacement order is viewed as a new order. This treatment is consistent with the manner in which this order type is applied today within the Order Book.

Parent/Child Orders

The Exchange's treatment of subordinate orders does not create an undue burden on intra-market competition because allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional order designation which is to count distinct orders and focus on the number of orders generated.

The Exchange does not believe that the proposed rule change will impose an undue burden on inter-market competition because other exchanges have announced the intent to adopt similar guidance.[19] The Exchange believes that disparate rules regarding Professional order designation, and a lack of uniform application of such rules, does not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that it is therefore prudent and necessary to conform its rules to that of other options exchanges for purposes of calculating the threshold volume of orders to be designated as a Professional. This is particularly true where the Exchange's third-party routing broker-dealers are members of several exchanges that have rules requiring Professional order designations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[22] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[23]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that it has considered a substantially similar proposed rule change filed by CBOE and PHLX which it approved after a notice and comment period.[24] This proposed rule change does not raise any new or novel issues from those considered in the CBOE and PHLX proposals. Based on the foregoing, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative date so that the proposal may take effect upon filing.[25]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[26] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2016–091 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2016–091. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2016–091 and should be submitted on or before July 28, 2016.

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[19] *See supra* note 16.

[20] 15 U.S.C. 78s(b)(3)(a)(iii).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] *Id.*

[24] *See* Securities Exchange Act Release Nos. 77450 (March 25, 2016) (Order Approving SR–CBOE–2016–005); 77449 (March 25, 2016), 81 FR 18665, (March 31, 2016) (Order Approving SR–Phlx–2016–10).

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16027 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78221; File No. SR–BatsEDGX–2016–28]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add Interpretation and Policy .01 to Rule 16.1 To Specify the Calculation Methodology for Counting Professional Orders

July 1, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Interpretation and Policy .01 to Rule 16.1 to specify the manner in which the Exchange calculates average daily order submissions for purposes of counting Professional orders, as further described below.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Interpretation and Policy .01 to Rule 16.1 to specify the methodology for counting average daily order submissions in listed options to determine whether a person or entity meets the definition of a Professional ("Professional order counting"). The proposed rule change is designed to harmonize Professional order counting with the recently adopted rules of competing options exchanges—specifically the Chicago Board of Options Exchange, Inc. ("CBOE") and NASDAQ OMX PHLX LLC ("PHLX").[5]

Rule 16.1(a)(46) defines a Professional "as any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)." In adopting Rule 16.1(a)(46), the Exchange believed that identifying Professional accounts based upon the average number of orders entered in qualified accounts is an appropriate, objective approach that will reasonably distinguish such persons and entities from non-professional, retail investors or market participants. In order to properly represent orders entered on the Exchange, Options Members are required to indicate whether Customer orders are "Professional" orders.[6] To comply with this requirement, Options Members are required to review their Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Customer orders or Professional orders.[7]

The advent of new multi-leg spread products and the proliferation of the use of complex orders and algorithmic execution strategies by both institutional and retail market participants has raised questions as to what should be counted as an "order" for Professional order counting purposes. The proposed changes would specifically address the counting of multi-leg spread products, algorithm generated orders, and complex orders for purposes of determining Professional status. In addition, the proposal is intended to provide guidance regarding the methodology used by the Exchange when calculating average daily orders for Professional order counting purposes.[8]

As proposed, the rule would provide that an order would count as one order for Professional counting purposes, unless one of the exceptions enumerated in the proposed rule stipulates otherwise (each an "Exception"). The first Exception relates to the treatment of complex orders for purposes of computing orders for Professional order counting purposes. Specifically, the proposed rule provides that a complex order of eight (8) option legs or less would count as one order, whereas a complex order comprised of nine (9) option legs or more counts as multiple orders with each option leg counting as its own separate order.[9] The Exchange believes the distinction between complex orders with up to eight option legs from those with nine or more option legs is appropriate in light of the purposes for which Rule 16.1(a)(46) was adopted. In particular, the Exchange notes that multi-leg complex order strategies with nine or more option legs are more complex in nature and thus, more likely to be used by professional traders than traditional two, three, and four option leg complex order strategies such as the strangle, straddle, butterfly, collar, and condor strategies, and combinations thereof with eight option legs or fewer, which are generally not algorithmically generated and are frequently used by non-professional, retail investors. Thus, the types of complex orders traditionally placed by retail investors would continue to count as only one order while the more complex strategy orders that are typically used by professional traders would count as multiple orders for Professional order counting purposes.[10]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release Nos. 77450 (March 25, 2016), 81 FR 18668, (March 31, 2016) (SR–CBOE–2016–005); 77449 (March 25, 2016), 81 FR 18665, (March 31, 2016) (SR–Phlx–2016–10) (approval orders). The Exchange notes that it recently issued guidance regarding Professional order counting. *See e.g.,* Bats BZX Exchange, Inc. and Bats EDGX Exchange Inc., Regulatory Circular (RC–2015–012, respectively) dated December 21, 2015. This proposal codifies that guidance in a manner that is consistent with CBOE and PHLX's approved rules. The Exchange notes that various other options exchanges refer to Professionals as "Professional Customers." The Exchange has proposed to continue to use the term Professional, as is currently the case in Exchange rules.

[6] *See e.g.,* Rule 18.2(a)(6) (Conduct and Compliance with the Rules) (requiring that accurate information is input into the System, including but not limited to, the Options Member's capacity).

[7] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional orders for the next calendar quarter. Option Members would be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While Option Members only would be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Customer orders but that has averaged more than 390 orders per day during a month, the Exchange would notify the Option Member and the Option Member would be required to change the manner in which it is representing the customer's orders within five business days.

[8] This proposal is consistent with CBOE and PHLX's approved rules. *See* supra note 5.

The second Exception relates to calculations for parent/child orders. As proposed, if a parent order submitted for the beneficial account(s) of a person or entity other than a broker or dealer is subsequently broken up into multiple child orders on the *same side* (buy/sell) *and series* by a broker or dealer, or by an algorithm housed at the broker or dealer, or by an algorithm licensed from the broker or dealer but housed with the customer, then the order would count as one order even if the child orders are routed across several exchanges.[11] The Exchange believes this proposed change would allow the orders of public customers to be "worked" by a broker (or a broker's algorithm) in order to achieve best execution without counting the multiple child orders as separate orders for Professional order counting purposes. Conversely, if a parent order, including a strategy order,[12] is broken into multiple child orders on *both sides* (buy/sell) of a series and/or multiple series, then each child order would count as a *separate* new order per side and series.[13] This proposed change would allow the Exchange, for Professional order counting purposes, to count as multiple orders those "child" orders of "parent" orders generated by algorithms that are typically used by sophisticated traders to continuously update their orders in concert with market updates in order to keep their overall trading strategies in balance.

The third Exception would govern the counting methodology for cancel/replace orders. As proposed, any order that cancels and replaces an existing order would count as a *separate* order (or multiple orders in the case of complex orders of nine option legs or more) for Professional order counting purposes.[14] However, the Exchange proposes that an order to cancel and replace a child order would *not* count as a new order if the parent order that was placed for the beneficial account(s) of a non-broker or dealer had been subsequently broken into multiple child orders on the same side and series as the parent order by a broker or dealer, algorithm at a broker or dealer, or algorithm licensed from a broker or dealer but housed at the customer.[15] By contrast, the Exchange proposes that an order that cancels and replaces a child order resulting from a parent order, including a strategy order, that generated child orders on both sides (buy/sell) of a series and/or in multiple series would count as a new order per side and series ("Both Sides/Multiple Series").[16] Finally, the Exchange proposes that, notwithstanding the treatment of a cancel/replace relating to Same Sides/Same Series orders, an order that cancels and replaces any child order resulting from a parent order being pegged to the Exchange's best bid or offer ("BBO") or the national best bid or offer ("NBBO") or that cancels and replaces any child order pursuant to an algorithm that uses the BBO or NBBO in the calculation of child orders and attempts to move with or follow the BBO or NBBO of a particular options series would count as a new order each time the order cancels and replaces in order to attempt to move with or follow the BBO or NBBO.[17]

Implementation

The Exchange proposes to implement the rule on July 1, 2016, which would be announced in a circular distributed to Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5),[19] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the requirement set forth in Section 6(b)(5)[20] of the Act that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposal is designed to adopt a reasonable and objective approach to determine Professional status that is consistent with the approach being utilized on other options exchanges, which benefits market participants by providing consistency across exchanges regarding the Professional order counting.[21] In this regard, the Exchange believes that codifying the manner in which the Exchange would conduct Professional order counting would provide Option Members with certainty and provide them with insight as they conduct their own quarterly reviews for purposes of designating orders.

The Exchange notes that it is not amending the threshold of 390 orders in listed options per day but, consistent with other exchanges, is revising the method for counting Professional orders in the context of multi-part orders and cancel/replace activity. In short, the proposal addresses how to account for complex orders, parent/child orders, and cancel/replace orders. The Exchange believes that distinguishing between complex orders with nine or more option legs and those orders with eight or fewer option legs is a reasonable and objective approach. In addition, the Exchange believes the proposal appropriately distinguishes between parent/child orders that are generated by a broker's efforts to obtain an execution on a larger size order while minimizing market impact and multi-part orders that used by more sophisticated market participants. Similarly, the Exchange believes that the proposal that cancel/replace orders would count as separate orders with limited exceptions is a reasonable and objective approach to distinguish the orders of retail customers that are "worked" by a broker from orders generated by algorithms used by more sophisticated market participants.

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[9] *See* proposed Interpretation and Policy .01(a)(1)–(2).

[10] *See also* supra note 5.

[11] *See* proposed Interpretation and Policy .01(b)(1).

[12] The term "strategy order" refers to an execution strategy, trading instruction, or algorithm whereby multiple "child" orders on both sides of a series and/or multiple series are generated prior to being sent to an options exchange(s).

[13] *See* proposed Interpretation and Policy .01(b)(2).

[14] *See* proposed Interpretation and Policy .01(c)(1).

[15] *See* proposed Interpretation and Policy .01(c)(2).

[16] *See* proposed Interpretation and Policy .01(c)(3).

[17] *See* proposed Interpretation and Policy .01(c)(4).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* supra note 5.

In addition, the Exchange believes that proposed changes to Rule 16.1 provide a more conservative order counting regime for Professional order counting purposes that would identify more traders as Professionals to which the Exchange's definition of Professional was designed to apply and create a better competitive balance for all participants on the Exchange, consistent with the Act. As the options markets have evolved to become more electronic and more competitive, the Exchange believes that the distinction between registered broker-dealers and professional traders who are currently treated as public customers has become increasingly blurred. More and more, the category of public customer today includes sophisticated algorithmic traders including former market makers and hedge funds that trade with a frequency resembling that of broker-dealers. The Exchange believes that it is reasonable under the Act to treat those customers who meet the high level of trading activity established in the proposal differently than customers who do not meet that threshold and are more typical retail investors to ensure that professional traders do not take advantage of priority and/or fee benefits intended for public customers. The Exchange notes that it is not unfair to differentiate between different types of investors in order to achieve certain marketplace balances. The Exchange's Rules currently differentiate between Customers, Order Entry Firms, Market Makers, and the like.

These differentiations have been recognized to be consistent with the Act. The Exchange does not believe that the rules of the Exchange or other exchanges that accord priority or fee benefits to public customers over broker-dealers are unfairly discriminatory. Nor does the Exchange believe that it is unfairly discriminatory to accord such benefits to only those public customers who on average do not place more than one order per minute (390 per day) under the counting regime that the Exchange proposes. The Exchange believes that such differentiations drive competition in the marketplace and are within the business judgment of the Exchange. Accordingly, the Exchange also believes that its proposal is consistent with the requirement of Section 6(b)(8) [22] of the Act that the rules of an exchange not impose an unnecessary or inappropriate burden upon competition in that it treats persons who should be deemed Professionals, but who may not be so under current Rule 16.1(a)(46), in a manner so that they do not receive special benefits. Furthermore, the Exchange believes that the proposed rule change will protect investors and the public interest by helping to assure that retail customers continue to receive the appropriate marketplace advantages on the Exchange and in the marketplace as intended, while furthering competition among marketplace professionals by treating them in the same manner as other similarly situated market participants. The Exchange believes that it is consistent with Section 6(b)(5) [23] of the Act not to afford market participants with similar access to information and technology as that of brokers and dealers of securities with marketplace advantages over such marketplace competitors. The Exchange also believes that the proposed rule change would help to remove burdens on competition and promote a more competitive marketplace by affording certain marketplace advantages only to those for whom they are intended. Finally, the Exchange believes that the proposed rule change sets forth a more detailed and clear regulatory regime with respect to calculating average daily order entry for Professional order counting purposes. The Exchange believes that this additional clarity and detail will eliminate confusion among market participants, which is in the interests of all investors and the general public.

Based on the foregoing, the Exchange believes the proposal, which establishes an objective methodology for counting average daily order submissions for Professional order counting purposes, is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that its proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will help ensure fairness in the marketplace and promote competition among all market participants. The Exchange believes that this proposal would help establish more competition among market participants and promote the purposes for which the Exchange's Professional rule was originally adopted. Moreover, the proposal would ensure consistency and help to eliminate confusion as to the manner in which options exchanges compute the Professional order volume.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and subparagraph (f)(6) of Rule 19b–4 thereunder.[25] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[26] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[27]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that it has considered a substantially similar proposed rule change filed by CBOE and PHLX which it approved after a notice and comment period.[28] This proposed rule change does not raise any new or novel issues from those considered in the CBOE and PHLX proposals. Based on the foregoing, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designate the proposed rule change as operative upon filing with the Commission.[29]

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[22] 15 U.S.C. 78f(b)(8).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(3)(a)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] *Id.*

[28] *See* Securities Exchange Act Release Nos. 77450 (March 25, 2016) (Order Approving SR–CBOE–2016–005); 77449 (March 25, 2016), 81 FR 18665, (March 31, 2016) (Order Approving SR–Phlx–2016–10).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[30] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR BatsEDGX–2016–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–28, and should be submitted on or before July 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Brent J. Fields,

Secretary.

[FR Doc. 2016–16111 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Rule 302; SEC File No. 270–453, OMB Control No. 3235–0510.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 302 (17 CFR 242.302) of Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities and Exchange Act of 1934 ("Act") (15 U.S.C. 78a *et seq.*).

Regulation ATS sets forth a regulatory regime for "alternative trading systems" ("ATSs"), which are entities that carry out exchange functions but which are not required to register as national securities exchanges under the Act. In lieu of exchange registration, an ATS can instead opt to register with the Commission as a broker-dealer and, as a condition to not having to register as an exchange, must instead comply with Regulation ATS. Rule 302 of Regulation ATS (17 CFR 242.302) describes the recordkeeping requirements for ATSs. Under Rule 302, ATSs are required to make a record of subscribers to the ATS, daily summaries of trading in the ATS, and time-sequenced records of order information in the ATS.

The information required to be collected under Rule 302 should increase the abilities of the Commission, state securities regulatory authorities, and the self-regulatory organizations ("SROs") to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. If the information is not collected or collected less frequently, the regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

Respondents consist of ATSs that choose to register as broker-dealers and comply with the requirements of Regulation ATS. There are currently 84 respondents. These respondents will spend approximately 3,780 hours per year (84 respondents at 45 burden hours/respondent) to comply with the recordkeeping requirements of Rule 302. At an average cost per burden hour of $65, the resultant total related internal cost of compliance for these respondents is $245,700 per year (3,780burden hours multiplied by $65/hour).

Compliance with Rule 302 is mandatory. The information required by Rule 302 is available only for the examination of the Commission staff, state securities authorities, and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522 ("FOIA"), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

ATSs are required to preserve, for at least three years, any records made in the process of complying with the requirements set out in Rule 302.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive

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[29] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 17 CFR 200.30–3(a)(12).

Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16039 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78205; File No. SR–ICC–2016–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Revise the ICC Treasury Operations Policies and Procedures

June 30, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on June 15, 2016, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of proposed rule change is to revise the ICC Treasury Operations Policies and Procedures to provide for the use of a committed foreign exchange ("FX") facility, to make changes to the investment guidelines as well as additional clean-up changes, and to provide additional clarification regarding the calculation of collateral haircuts. These revisions do not require any changes to the ICC Clearing Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC proposes changes to the ICC Treasury Operations Policies and Procedures to provide for the use of a committed FX facility, to make changes to the investment guidelines as well as additional clean-up changes, and to provide additional clarification regarding the calculation of collateral haircuts. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed revisions are described in detail as follows.

ICC has revised its Treasury Operations Policies and Procedures to provide for the use of a committed FX facility. ICC has established a committed FX facility which provides for same day settled spot FX transactions. The facility allows ICC to use available United States Dollars ("USD") to convert into Euro to meet a Euro liquidity need, for example in the unlikely event of a Clearing Participant default when Euro is needed for liquidity but only USD is available. In addition, the policy has been revised to document that the FX facility will be tested twice a year.

Additionally, ICC has revised its Treasury Operations Policies and Procedures to make changes to the ICC Treasury Department investment guidelines for operating capital and guaranty fund and margin cash. ICC has updated the list of permitted investments to add short term US Treasury securities (with a final maturity of no greater than 98 days) and remove Money Market Mutual Funds. ICC has also updated its investment policy for operating capital to include Treasury/agency reverse repurchase ("repo") agreements. ICC has updated the governance section of the operating capital investment policy to note that the Risk Committee will review any proposed changes to the policy and make recommendations to the Board. Further, ICC has removed reference to an obsolete financial report.

ICC also has made additional clean-up changes throughout the Treasury Operations Policies and Procedures. Specifically, ICC has removed outdated language stating that ICC treasury services are provided by The Clearing Corporation. Further, throughout the document, ICC changed references to the "Director of Operations" to the "Chief Operating Officer," to correctly reflect the officer title. ICC removed reference to specific reverse repo counterparties to reflect the addition of multiple reverse repo counterparties. Further, ICC notes that it has arrangements in place to settle tri-party and bilateral reverse repo transactions, both of which settle delivery vs. payment ("DVP"). As a result, ICC has clarified references throughout the policy from "DVP reverse repo" to more specifically refer to "bilateral reverse repo." ICC removed reference to the titles of specific agreements that it may enter to effect reverse repo transactions and added general language to encompass all agreements that may be required. ICC removed information regarding the monitoring of available liquidity resources and added reference to the ICC Liquidity Risk Management Framework. ICC clarified that its committed repo facility may be used to convert sovereign debt into cash and that the facility will be tested twice per calendar year. ICC removed outdated information under the "ICE Clear Credit Banking Relationships" section of the policy and added language stating that ICC endeavors to maintain banking relationships with highly creditworthy and reliable bank institutions that provide operational and strategic support with respect to holding margin and Guaranty Fund cash and collateral. ICC also removed references to specific banking counterparties, as ICC's banking relationships have expanded to include multiple counterparties. ICC replaced the specific names with a generic reference, to capture all counterparties utilized by ICC. ICC also updated certain SWIFT banking information throughout the policy. Further, ICC updated the list of applications used by the Treasury Department to perform daily operations.

Finally, ICC revised its Treasury Operations Policies and Procedures to provide additional clarification regarding the calculation of collateral haircuts when yield rates are less than or equal to one basis point. This change documents current ICC practices as related to collateral haircut calculation; there is no change to the collateral haircut methodology.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Section 17A(b)(3)(F) of the Act[3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed revisions to the ICC Treasury Operations Policies and Procedures are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to section 17A(b)(3)(F),[4] because ICC believes that the proposed rule changes will facilitate the prompt and accurate settlement of swaps and security-based swaps, and contribute to the safeguarding of securities and funds associated with swap and security-based swap transactions which are in the custody or control of ICC or for which it is responsible.[5] The changes to provide for the use of a committed FX facility will enhance ICC's liquidity resources, and the changes to the investment guidelines ensure the reliable investment of assets in ICC's control with minimal risk. The additional clean-up changes ensure that the documentation of ICC's treasury arrangements remains up-to-date, clear, and transparent. Similarly, the additional clarification regarding the calculation of collateral haircuts promotes transparency of ICC's risk management practices as related to collateral haircuts. As such, the proposed rule changes will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of customer funds and securities within the control of ICC within the meaning of section 17A(b)(3)(F)[6] of the Act.

In addition, the proposed revisions to the ICC Treasury Operations Policies and Procedures are consistent with the relevant requirements of Rule 17Ad–22.[7] In particular, the use of a committed FX facility further ensures that ICC maintains sufficient financial resources at all times to meet the requirements set forth in Rule 17Ad–22(b)(3).[8] Additionally, the changes to the investment guidelines result in investment arrangements with minimal credit, market and liquidity risks. Such changes are therefore reasonably designed to meet the requirements of Rule 17Ad–22(d)(3).[9] Finally, the additional clean-up changes and clarification regarding the calculation of collateral haircuts ensure ICC's governance arrangements remain clear and transparent, consistent with the requirements of Rule 17AD–22(d)(8).[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed revisions would have any impact, or impose any burden, on competition. The revisions to ICC's Treasury Operations Policies and Procedures to provide for the use of a committed FX facility, to make changes to the investment guidelines as well as additional clean-up changes, and to provide additional clarification regarding the calculation of collateral haircuts apply uniformly across all CPs. Therefore, ICC does not believe the proposed revisions impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule changes have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2016–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2016–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2016–009 and should be submitted on or before July 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16032 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

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[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] *Id.*

[5] The Commission has modified the text prepared by ICC as agreed upon by ICC.

[6] *Id.*

[7] 17 CFR 240.17Ad–22.

[8] 17 CFR 240.17Ad–22(b)(3).

[9] 17 CFR 240.17Ad–22(d)(3).

[10] 17 CFR 240.17Ad–22(d)(8).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78219; File No. SR–FINRA–2016–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 7730 (Trade Reporting and Compliance Engine (TRACE))

July 1, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7730 to create a new Academic Corporate Bond TRACE Data product that would be available to institutions of higher education.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 7730 sets forth the TRACE data products offered by FINRA. FINRA's data product offerings include both real-time as well as historic data for most TRACE-eligible securities. FINRA is proposing to create a new Academic Corporate Bond TRACE Data product, which would be made available solely to institutions of higher education and would include masked dealer identifiers.

FINRA periodically receives requests from academics for access to TRACE data. FINRA's existing Historic TRACE Data product provides transaction-level data on an 18-month delayed basis for all transactions that have been reported to TRACE in the classes of TRACE-eligible securities that currently are disseminated.[3] While Historic TRACE Data is used by academic researchers today, it does not include any identifying information regarding the dealer reporting each transaction. Thus, where a researcher wishes to track the behavior of an individual dealer or group of dealers—even anonymously—the existing Historic TRACE Data product would not allow for this type of observation. As a result, academics have requested that FINRA make available an enhanced version of Historic TRACE Data that would include dealer identification.

In response to these requests from academics, the proposed rule change would create a new Academic Corporate Bond TRACE Data product that would include transaction-level data on corporate bonds (except a transaction that is a List or Fixed Offering Price Transaction[4] or a Takedown Transaction[5]),[6] including Rule 144A transactions in corporate bonds, with masked dealer identifiers. Masked dealer identifiers may be useful to academics in a variety of ways—for example, to enable researchers to track activity by individual dealers or group of dealers and observe their behaviors, and may facilitate the ability of academic researchers to study the impact of various events on measures such as intermediation costs, dealer participation and liquidity. Academic Corporate Bond TRACE Data would be made available only to academics (*i.e.,* requests originating from an institution of higher education).[7]

While FINRA understands that masked dealer identifiers may be very useful to academics in connection with their research activities, we also appreciate that firms may be concerned regarding the potential for reverse engineering. To address this issue, in addition to uniquely masking dealer identities for each academic institution, FINRA proposes to take mitigating steps, including to limit transactions included in the Academic Corporate Bond TRACE Data product to transactions that are at least 36 months old. In addition, FINRA would impose certain requirements on subscribers regarding the terms of use of the data. In the written agreement with subscribers to Academic Corporate Bond TRACE Data, among other things, FINRA will: (1) Explicitly require subscribers to agree that they will not attempt to reverse engineer the identity of any market participant; (2) prohibit the redistribution of data in the Academic Corporate Bond TRACE Data product; (3) require users to disclose each intended use of the data (including a description of each study being performed and the names of each individual who will have access to the data for the study); (4) require users to ensure that any data presented in work product be sufficiently aggregated so as to prevent reverse engineering of any dealer or transaction; and (5) require that the data be returned or destroyed if the agreement is terminated.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FINRA adopted the Historic TRACE Data rule and related fees in 2010. *See* Securities Exchange Act Release No. 61012 (November 16, 2009), 74 FR 61189 (November 23, 2009) (Order Approving File No. SR–FINRA–2007–006). *See also Regulatory Notice* 10–14 (March 2010).

[4] Rule 6710(q) generally defines "List or Fixed Offering Price Transaction" as a primary market sale transaction sold on the first day of trading of a security excluding a Securitized Product other than an Asset-Backed Security as defined in Rule 6710(cc): (i) By a sole underwriter, syndicate manager, syndicate member or selling group member at the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser, syndicate manager, syndicate member or selling group member at the published or stated fixed offering price.

[5] Rule 6710(r) generally defines "Takedown Transaction" as a primary market sale transaction sold on the first day of trading of a security excluding a Securitized Product other than an Asset-Backed Security: (i) By a sole underwriter or syndicate manager to a syndicate or selling group member at a discount from the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser or syndicate manager to a syndicate or selling group member at a discount from the published or stated fixed offering price.

[6] The existing Historic TRACE Data also does not include List or Fixed Offering Price or Takedown Transactions.

[7] In addition, FINRA intends to establish a fee for the Academic Corporate Bond TRACE Data product prior to the effective date of the proposed rule change. The fee will be established pursuant to a separate rule filing.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 270 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Pursuant to the proposal, FINRA will make available to institutions of higher education an enhanced historic TRACE data product that will include transaction-level data on corporate bonds on a 36-month delayed basis with masked identifying information regarding the dealer reporting each transaction. Academic Corporate Bond TRACE Data would be made available only to institutions of higher education. FINRA believes that the additional granularity provided by this new data product will enable researchers to track the behavior of individual dealers or group of dealers and observe their behaviors, and may facilitate the ability of academic researchers to study the impact of various events on measures such as intermediation costs, dealer participation and liquidity, thereby enhancing understanding of the market for corporate bonds and the behavior of its participants. Thus, FINRA believes that the proposed rule change is in the public interest and consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

FINRA's existing Historic TRACE Data product provides transaction-level data on an 18-month delayed basis for all transactions that have been reported to TRACE in the classes of TRACE-eligible securities that currently are disseminated. As detailed above, FINRA is proposing to create a new Academic Corporate Bond TRACE Data product, which would be made available solely to institutions of higher education with a 36-month delay and would include masked dealer identifiers associated with individual reported transactions, which is not available in the existing Historic TRACE Data product.

The proposed rule change would expand the benefits of FINRA's TRACE initiatives by providing additional transparency on corporate bond trading for academic research purposes. The analysis that can be conducted using masked dealer identifiers associated with individual reported transactions could incorporate estimates of anonymized dealer positions and hence potentially enhance the ability for researchers to analyze and understand dealer networks and liquidity provision in the corporate bond market.

The proposal to create a new Academic Corporate Bond TRACE Data product would not impose any additional reporting requirements or costs on firms and, as a result, would have no direct impact on firms. However, FINRA considered the potential for indirect costs regarding possible information leakage due to the inclusion of masked dealer identifiers in the data. To investigate whether the dissemination of masked dealer identifiers pose a risk for reverse engineering of the data to reveal the identity of individual firms, FINRA analyzed 15,533,134 corporate bond secondary market trades (that occurred between February 6, 2012 and February 5, 2016) in 21,164 unique corporate bonds that were issued between February 6, 2012 and February 7, 2015.[9]

The analysis below attempts to answer the question of whether primary underwriter information can be reliably linked to the largest seller in a given CUSIP and potentially unmask the true identity of the firm.[10]

Figure 1a plots the number of distinct corporate bond CUSIPs that are traded within the first *n* days after issuance (*n* = 0, 1, 2 . . . 30) and the percentage of CUSIPs where the largest seller in the secondary market also is the primary underwriter for that issue.[11] 11,825 distinct corporate bond CUSIPs are traded in the secondary market on the day of issuance (*n* = 0) and the largest seller also is the primary underwriter for approximately 6% of those CUSIPs. Within the first 30 days of trading (*n* = 30), the number of CUSIPs traded increase to 15,595, and the percentage of CUSIPs where the largest seller also is the primary underwriter increases to 11%. Effectively, if one assigned the masked dealer identifier associated with the most sale transactions in the 30-day window to the primary underwriter, the assignment would be correct for about one in ten CUSIPs.

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[8] 15 U.S.C. 78*o*–3(b)(6).

[9] The analysis is conducted from the perspective of the sell-side in a transaction. Historic TRACE Data and the proposed Academic Corporate Bond TRACE Data product do not include List or Fixed Offering Price Transactions or Takedown Transactions. Therefore, these transactions are excluded from our sample.

[10] Primary underwriter information is not a data field in TRACE, but is publicly available from various academic and commercial databases at the CUSIP level. "Largest seller" is defined as the Market Participant Identifier ("MPID") with the highest number of transactions over a given number of days.

[11] For example, for *n* = 2, the measure would determine the number of unique CUSIPs where the underwriter had been the largest seller of the security for the previous three days.

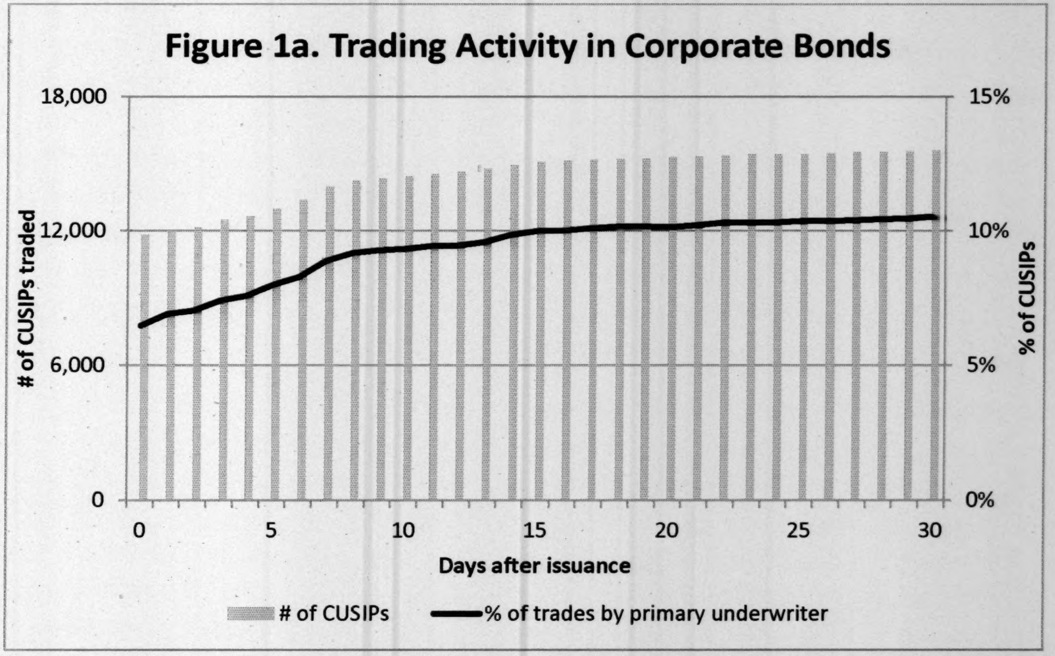

Figure 1a. Trading Activity in Corporate Bonds

Figure 1a suggests that largest seller information in a specific corporate bond can accurately be linked to the primary underwriter, unmasking the identity of the trading firm for approximately 10% of the CUSIPs. Alternatively, a researcher could limit its sample to those CUSIPs that are traded in the secondary market by a single masked dealer identifier within the first *n* days of trading and assume that this seller is the primary underwriter.

For example, in Figure 1b below, on the day of issuance (*n* = 0), there are 1,835 distinct corporate bonds that are traded by a single MPID, of which 222 (approximately 12%) are sold by the primary underwriter. If one looked at the first 30 days of secondary market trading (*n* = 30), there would be 2,138 distinct CUSIPs in our sample with a single MPID trading the issue and 17% of those MPIDs would be associated with the primary underwriter.

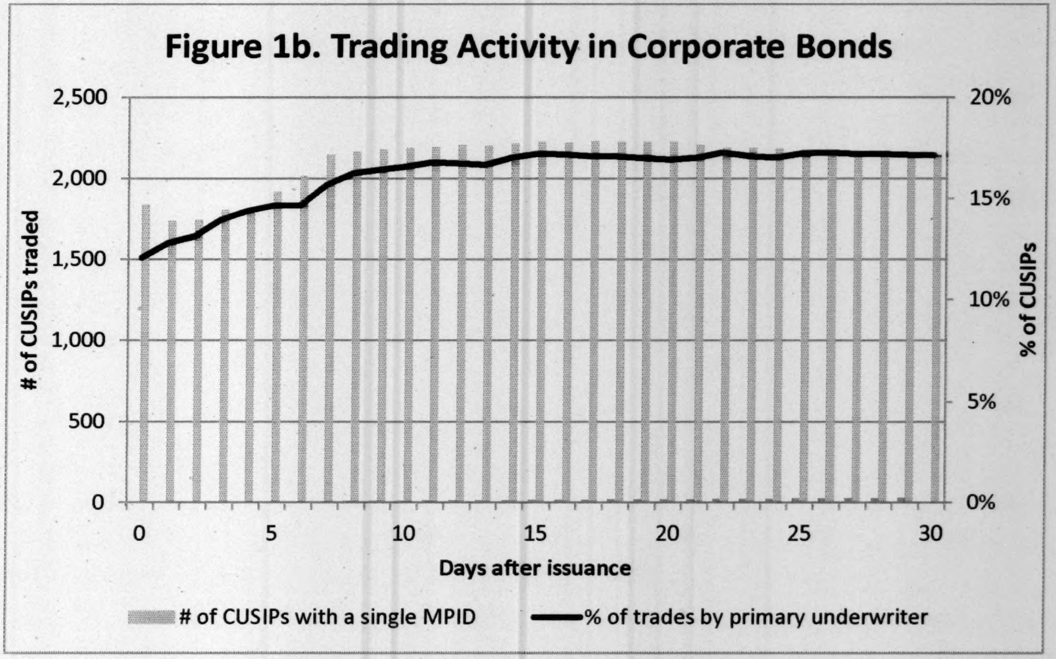

Figure 1b. Trading Activity in Corporate Bonds

Hence, these finding confirm that primary underwriter information alone is not sufficient to discover the true identity of the trading firm where the only other information used in the analysis is the information to be contained in the Academic Corporate Bond TRACE Data product.

However, FINRA acknowledges the potential for reverse engineering of masked dealer identifiers to determine the true identities of individual firms, and has taken a number of measures, as discussed above, to reduce this risk and mitigate any potential impacts.[12] FINRA believes that the potential additional research that may be facilitated by the availability of this new data product will enhance understanding of the market for TRACE-eligible securities and trending behavior and, therefore, should create a benefit for market participants.

FINRA may consider expanding TRACE data product offerings in the future to make transaction-level information with masked dealer identifiers available to academics for other types of TRACE-eligible securities. However, FINRA believes that starting with corporate bonds is an appropriate first step because most data requests received from academics have related to corporate bond data, and because corporate bonds generally are traded by a greater number of dealers and, therefore, do not present the same likelihood for accurate reverse engineering by academics.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 15–26.[13] FINRA received four comments in response to the *Regulatory Notice.*[14] A copy of the *Regulatory Notice* is attached as Exhibit 2a. A list of the commenters and copies of the comment letters received in response to the *Regulatory Notice* are attached as Exhibits 2b and 2c, respectively.

SIFMA generally supports the proposal but recommends specific modifications to further guard against information leakage. Specifically, SIFMA's suggestions include that TRACE data should be delayed a minimum of four years prior to being included in the academic data product; that transactions be grouped by dealer rather than masked on an individual basis (excluding information on List or Fixed Offering Price Transactions and Takedown Transactions); [15] and that the subscription agreement include restrictions around who at an academic institution is authorized to access the data. BDA also raised concerns regarding information leakage, and believes that the proposal does not adequately balance the risk to dealers with the benefits of academic research.

FINRA has considered concerns regarding information leakage due to masked dealer identifiers and the specific comments received. In response to comments, FINRA has modified the proposal in two significant ways. First, FINRA has modified the proposal to extend the data delay period to 36 months rather than the 24-month delay proposed in *Regulatory Notice* 15–26. In addition, FINRA is limiting the data to be included in the scope of the current proposal to transactions in corporate bonds, including Rule 144A transactions in corporate bonds. In *Regulatory Notice* 15–26, FINRA proposed to include all of the data sets currently included in the Historic TRACE Data product.[16] However, because most data requests from academics relate to corporate bonds, and because trading may be more concentrated among a smaller number of dealers for other types of TRACE-eligible securities, FINRA believes it is appropriate to initially adopt the Academic TRACE Data product to include transaction information on corporate bonds only, and may reconsider the scope of the product in the future. FINRA believes that these changes to the academic data product, along with the other measures included in the proposal, such as the restricted scope of distribution limited to institutions of higher education; the safeguards included in the data agreement; and the use of masked identifiers, are sufficient in preventing and mitigating any impact associated with information leakage.

BDA and SIFMA also suggest using groupings, rather than masked individual dealer IDs, in the academic data product. FINRA has considered this alternative and continues to believe that transaction-level information masked at the individual dealer level is appropriate. FINRA believes that groupings will reduce the utility of the data for academic researchers and prevent them from accurately undertaking studies that analyze dealer behavior, or that need to control for dealer-specific factors. However, FINRA notes that masked identifiers will be made unique per subscriber. FINRA believes that, while changing the masked identifier per data request as suggested by BDA would impede research by a single subscriber, assigning unique masked identifiers per subscriber may both help guard against coordinated efforts at attempting reverse engineering dealer identities as well as assist FINRA in identifying the source of conduct that violates the FINRA subscription agreement. FINRA may consider amending or discontinuing the Academic Corporate Bond TRACE Data product, as currently proposed, if future experience shows that anonymized dealer identifier are reverse engineered by academics.

BDA states that prohibiting users from attempting to reverse engineer a dealer's identity will not extend to a reader of any study. However, FINRA notes that the user agreement also will require that any data presented in work product be sufficiently aggregated so as to prevent reverse engineering of any dealer or transaction, and believes that this measure would protect against reverse engineering by readers of published works.

Wharton supports the proposed academic data product and states that the "[a]cademic community's primary interest in having broker IDs is not related to the desire to determine the identities/names of underlying brokers, but most importantly to assess the role of brokers in bond market liquidity and price discovery process."[17] Wharton also states that it has received data with masked broker identities for years from data vendors and is unaware of any cases where this availability has led to successful reverse engineering and public disclosure of broker identities.[18]

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[12] For example, other publicly-available information exists that may contribute to the potential for successful reverse engineering of dealer identities. One such dataset that can be obtained by academics is sold by the National Association of Insurance Commissioners (NAIC) and contains detailed information about insurance company bond transactions, including the CUSIP of the bond traded, the identities of insurance companies and the dealers between whom each trade is completed, the date of the transaction, the amount traded, and the price of the transaction. Please see description of the data in a recent paper by O'Hara et al. (2015) at *http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2680480.*

[13] *Regulatory Notice* 15–26 (July 2015).

[14] *See* Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, to Marcia E. Asquith, Corporate Secretary, FINRA, dated August 24, 2015 ("BDA"), letter from Luis Palacios, Director of Research Services, The Wharton School, to Marcia E. Asquith, Corporate Secretary, FINRA, dated September 10, 2015 ("Wharton"), letter from David L. Cohen, Managing Director & Associate General Counsel, and Sean Davy, Managing Director, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated September 11, 2015 ("SIFMA"), and letter from Carrie Devorah, Founder, The Center for Copyrights Integrity, to Marcia E. Asquith, Corporate Secretary, FINRA, dated September 14, 2015 ("CCI").

[15] BDA also notes that the proposal does not state that the masked ID used will be changed periodically. To reduce the risk of dealer identification, BDA recommends that dealers be grouped by size in the Academic TRACE Data.

[16] Historic TRACE Data is transaction-level data and includes the following data sets: The Historic Corporate Bond Data Set, the Historic Agency Data Set, the Historic Securitized Product Data Set and the Historic Rule 144A Data Set.

BDA and SIFMA raised concerns around the inclusion of primary market transaction information (for List or Fixed Offering Price Transactions and Takedown Transactions) in Academic TRACE Data. FINRA confirms that List or Fixed Offering Price Transactions and Takedown Transactions will not be included in the Academic Corporate Bond TRACE Data product.[19]

BDA, CCI[20] and SIFMA raised the issue of information leakage due to potential data security breaches. FINRA notes that the data usage agreement also will address security measures. For example, FINRA intends that the data agreement require the use of commercially reasonable measures to protect the data and that users administer reasonable security procedures where the data is used, accessed, processed, stored or transmitted to ensure that the data remains secure from unauthorized access.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–024, and should be submitted on or before July 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Brent J. Fields,

Secretary.

[FR Doc. 2016–16109 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78198; File No. SR–NYSEMKT–2016–52]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rules 340, 341, and 359 To Extend the Time Within Which a Member or Member Organization or an ATP Holder Must File a Uniform Termination Notice for Securities Industry Registration

June 30, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 16, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE MKT. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 340, 341 and 359 to harmonize the requirement of when a member or member organization or an ATP Holder must file an Uniform Termination Notice for Securities Industry Registration ("Form U–5") with the rules of other exchanges and FINRA. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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[17] *See* Wharton letter.

[18] Wharton provides in its letter examples of vendor data that has been available with masked broker IDs. Specifically, Wharton states that "Thomson-Reuters IBES analyst forecast and recommendations database is a good example as it has been providing masked IDs for both brokerage houses as well as individual analysts since the early 80's. Another example is Ancerno (Abel-Noser) high-frequency database of institutional trades which academic researchers have used mainly for the reason that it contains a masked institution ID (*e.g.,* Arif, Rephael and Lee, 2015; Choi and Sias, 2012)." *See* Wharton letter.

[19] *See supra* note 6.

[20] CCI raises issues regarding the security of customer information. FINRA notes that the Academic TRACE Data would consist of security-focused transaction information, not customer information. CCI also raises other issues that are not germane to the instant proposal and that, therefore, are not addressed herein.

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 340, 341 and 359 to harmonize the requirement of when a member or member organization or an ATP Holder must file a Form U–5 with the requirements on other exchanges and the Financial Industry Regulatory Authority ("FINRA"). This filing is not intended to address any other registration requirements in Exchange rules.

Specifically, under current Commentary .01 to Rule 340, members and member organizations (collectively, "Members") are required to electronically file a Form U–5 and any amendment thereto to the Central Registration Depository ("CRD") within ten (10) days of the date of termination of an employee that has been approved for admission to the trading floor. Under current Commentary .09 to Rule 341, Members must submit information concerning the termination of employment of a member, registered employee or an officer on Form U–5 within ten (10) days of the date of termination.[4] Under current Rule 359(a), an ATP Holder that terminates an ATP Holder or approved person shall electronically file a Form U–5 within ten (10) days of such termination. While each of these rules govern [sic] the same topic, they do not use the same rule language.

The Exchange proposes to amend these three rules by replacing the current requirements of when to electronically file a Form U–5 with the same requirement in each rule that a member, member organization, or ATP Holder (as applicable) promptly file a Form U–5 electronically with CRD, but not later than 30 calendar days after the date of termination of a member, ATP Holder, registered employee or approved person (as applicable). The proposed rule would further require that any amendment to a Form U–5 must also be promptly filed electronically with CRD, but not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment. Finally, the proposed rule would provide that all Forms U–5 must also be provided to the terminated person concurrently with filing.

The proposed rule text is based on the requirements of other exchanges and FINRA and therefore would harmonize the requirement of when a member or member organization or an ATP Holder must file a Form U–5 with the rules of other exchanges and FINRA.[5] The Exchange believes that the proposed rule changes will promote the protection of investors by adding that a Form U–5 be filed promptly, rather than the current requirement that a Form U–5 be filed within 10 days. The Exchange believes that this proposed requirement may lead to Form U–5s being filed sooner than the current 10-day requirement. Consistent with the rules of other exchanges and FINRA, the rule would further provide that a Form U–5 should be filed not later than 30 days after the date of termination. While this date is longer than the current 10 day requirement, the Exchange believes that this timing, combined with the requirement to file promptly, may still lead to firms submitting Form U–5s on a more prompt basis. In addition, the proposed rule would harmonize the standard, thus reducing the burden on competition for member organizations and ATP Holders that are members of multiple exchanges and FINRA to meet similar requirements. Such conformance to the prevalent standard would both harmonize the time period for filing the requisite Form U–5 across multiple self-regulatory organizations and establish a known consistent standard to further ensure adherence.

2. Statutory Basis

The Exchange believes that the proposed changes are consistent with Section 6(b) of the Act,[6] in general, and furthers [sic] the objectives of Section 6(b)(5),[7] in particular, in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule changes would remove impediments to and perfect the mechanisms of a free and open market by conforming the time period within which Members and ATP Holders must file a Form U–5 to the requirement that such forms be filed promptly, but not later than 30 days after the termination event. The Exchange believes that the proposed rule changes would protect investors and the public interest by adding that Form U–5s should be filed promptly, rather than requiring only that they be filed within 10 days. In addition, the Exchange believes that adding the requirement that a Form U–5 be filed not later than 30 days after the event would eliminate the disparity among the exchanges, other SROs and the affected persons stemming from the cessation of their employment. In this regard, the proposed changes would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities as they would both harmonize the time period for filing the requisite Form U–5 across multiple self-regulatory organizations and establish a known consistent standard to further ensure adherence. Such action would not affect nor diminish the abilities of the Exchange, its Members or an ATP Holder to fulfill their regulatory responsibilities under the Act or the rules promulgated thereunder, including but not limited to the responsibilities to monitor the activities of such persons, nor would such proposed amendment affect the rights of such terminated persons.

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[4] Commentary .09 to Rule 341 does not currently specify electronic transmission, an absence that the proposed amendment would also remedy.

[5] *See* New York Stock Exchange LLC ("NYSE") Rule 345(a).17(a) and (b) (requiring that a Form U–5 shall be reported promptly, but in any event not later than 30 days following termination, that any amendment to the Form U–5 shall be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice must be provided concurrently to the person whose association has been terminated); BATS BZX Exchange, Inc. ("BZX") Rule 2.5 Interpretations and Policies .04(a) and (b) (requiring that a Form U–5 be reported immediately following the date of termination, but in no event later than 30 days following termination, that any amendment to the Form U–5 shall be filed no later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice or amendment should [sic] be provided concurrently to the person whose association has been terminated); FINRA By-Laws Article 5 Sec. 3(a) and (b) (requiring that notice of termination be filed not later than 30 days after termination, that an amendment to a Form U–5 be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that notice be provided concurrently to the person whose association has been terminated within the time periods prescribed).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

The Exchange believes this additional transparency and clarity removes a potential impediment to, and would contribute to perfecting, the mechanism for a free and open market and a national market system, and, in general, would protect investors and the public interest by harmonizing the time period for filing the requisite Form U–5 across multiple SROs, and by imposing the requirement that such forms be filed promptly.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that these proposed rule changes would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are not designed to address any competitive issue but rather to harmonize Exchange time-filing requirements to a standard prevalent among other exchanges and FINRA, thereby reducing any potential confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes that the proposed rule changes would serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEMKT–2016–52 and should be submitted on or before July 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16025 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–0213.

Extension:
Rule 17Ad–10; SEC File No. 270–265, OMB Control No. 3235–0273.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–10 (17 CFR 240.17Ad–10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–10 generally requires registered transfer agents to: (1) Create and maintain current and accurate securityholder records; (2) promptly and accurately record all transfers, purchases, redemptions, and issuances, and notify their appropriate regulatory agency if they are unable to do so; (3) exercise diligent and continuous attention in resolving record inaccuracies; (4) disclose to the issuers for whom they perform transfer agent functions and to their appropriate regulatory agency information regarding record inaccuracies; (5) buy-in certain record inaccuracies that result in a physical over issuance of securities; and (6) communicate with other transfer agents related to the same issuer. These requirements assist in the creation and maintenance of accurate securityholder records, enhance the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding over issuance.

The rule also has specific recordkeeping requirements. It requires registered transfer agents to retain certificate detail that has been deleted for six years and keep current an accurate record of the number of shares or principal dollar amount of debt securities that the issuer has authorized to be outstanding. These mandatory requirements ensure accurate securityholder records and assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

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[9] This filing is intended to address only the filing requirements of Forms U–5; it is not intended to address or affect any other mandatory filing requirements or procedures.

[10] 17 CFR 200.30–3(a)(12).

There are approximately 413 registered transfer agents. We estimate that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 80 hours per year, which generates an industry-wide annual burden of 33,040 hours (413 times 80 hours). This burden is of a recordkeeping nature but also includes a small amount of third party disclosure and SEC reporting burdens. At an average staff cost of $50 per hour, the industry-wide internal labor cost of compliance (a monetization of the burden hours) is approximately $1,652,000 per year (33,040 × $50).

In addition, we estimate that each transfer agent will incur an annual external cost burden of $18,000 resulting from the collection of information. Therefore, the total annual external cost on the entire transfer agent industry is approximately $7,434,000 ($18,000 times 413). This cost primarily reflects ongoing computer operations and maintenance associated with generating, maintaining, and disclosing or providing certain information required by the rule.

The amount of time any particular transfer agent will devote to Rule 17Ad–10 compliance will vary according to the size and scope of the transfer agent's business activity. We note, however, that at least some of the records, processes, and communications required by Rule 17Ad–10 would likely be maintained, generated, and used for transfer agent business purposes even without the rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16037 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78208; File No. SR–NASDAQ–2016–092]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide a Process for an Expedited Suspension Proceeding and Adopt a Rule To Prohibit Disruptive Quoting and Trading Activity

June 30, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2016, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a proposal to adopt a new NASDAQ Options Market LLC rule to clearly prohibit disruptive quoting and trading activity on the Exchange, as further described below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is filing this proposal to adopt an options rule to clearly prohibit disruptive quoting and trading activity on the Exchange and to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule pursuant to Rule 9400.

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the Exchange's Rules. Further, the Exchange's Rules are required to be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest." [3] In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity that is both operated directly by Exchange staff and by staff of the Financial Industry Regulatory Authority ("FINRA") pursuant to a Regulatory Services Agreement ("RSA"). When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange or FINRA (acting as an agent of the Exchange) conducts an investigation into the activity, requesting additional information from the Member or Members involved. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules have been identified and confirmed, the Exchange or FINRA as its agent will commence the enforcement process, which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or even a temporary or permanent ban from the securities industry.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(1).

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period is generally necessary and appropriate to afford the subject Member adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange.

In recent years, several cases have been brought and resolved by the Exchange and other SROs that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering[4] or spoofing.[5] The Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, in accordance with Exchange Rules and the Act, the Members responsible for such conduct or responsible for their customers' conduct were allowed to continue the disruptive quoting and trading activity on the Exchange and other exchanges during the entirety of the subsequent lengthy investigation and enforcement process. The Exchange believes that it should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange if a Member is engaging in or facilitating disruptive quoting and trading activity and the Member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The following two examples are instructive on the Exchange's rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (the "Firm") and its CEO were barred from the industry for, among other things, supervisory violations related to a failure by the Firm to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.[6] The Firm's sole business was to provide trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by the Firm to U.S. markets originated directly or indirectly from foreign clients of the Firm. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008. Although the Firm and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, the Firm took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the Firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (the "Firm") settled a regulatory action in connection with the Firm's provision of a trading platform, trade software and trade execution, support and clearing services for day traders.[7] Many traders using the Firm's services were located in foreign jurisdictions. The Firm ultimately settled the action with FINRA and several exchanges, including the Exchange, for a total monetary fine of $3.4 million. In a separate action, the Firm settled with the Commission for a monetary fine of $2.5 million.[8] Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, the Firm also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. The Firm was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative quoting and trading was promptly detected, it continued for several years.

The Exchange also notes the current criminal proceedings that have commenced against Navinder Singh Sarao. Mr. Sarao's allegedly manipulative trading activity, which included forms of layering and spoofing in the futures markets, has been linked as a contributing factor to the "Flash Crash" of 2010, and yet continued through 2015.

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below. In addition, while the examples provided are related to the equities market, the Exchange believes that this type of conduct should be prohibited for all Exchange members, equities and options. The Exchange believes that these patterns of disruptive and allegedly manipulative quoting and trading activity need to be addressed and the product should not limit the action taken by the Exchange. For this reason, the Exchange now proposes a corresponding options rule.

Rule 9400—Expedited Client Suspension Proceeding

The Exchange adopted Rule 9400 to set forth procedures for issuing suspension orders, immediately prohibiting a Member from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures provide the Exchange the authority to order a Member to cease and desist from providing access to the Exchange to a client of the Member that is conducting disruptive quoting and trading activity in violation of Rule 2170. Paragraph (a) of Rule 9400, with the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, the Office of General Counsel or Regulatory Department of the Exchange (such departments generally referred to as the "Exchange" for purposes of Rule 9400) and may initiate an expedited suspension proceeding with respect to alleged violations of Rule 2170. Paragraph (a) also sets forth the requirements for notice and service of such notice pursuant to the Rule, including the required method of service and the content of notice.

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[4] "Layering" is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[5] "Spoofing" is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

[6] *See Biremis Corp. and Peter Beck,* FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

[7] *See Hold Brothers On-Line Investment Services, LLC,* FINRA Letter of Acceptance, Waiver and Consent No. 20100237710001, September 25, 2012.

[8] *In the Matter of Hold Brothers On-Line Investment Services, LLC,* Exchange Act Release No. 67924, September 25, 2012.

Paragraph (b) of Rule 9400 governs the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers. The Exchange's Rules provide for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned in accordance with Rules 9233(a). In addition to recusal initiated by such a Hearing Officer, a party to the proceeding will be permitted to file a motion to disqualify a Hearing Officer. However, due to the compressed schedule pursuant to which the process would operate under Rule 9400, the rule requires such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof. Pursuant to existing Rule 9233(c), a motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer based on a prompt investigation. The applicable Hearing Officer shall remove himself or herself and request the Chief Executive Officer to reassign the hearing to another Hearing Officer such that the Hearing Panel still meets the compositional requirements described in Rule 9231(b). If the Chief Hearing Officer determines that the Respondent's grounds for disqualification are insufficient, it shall deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will proceed with the hearing.

Under paragraph (c) of the Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed. Paragraph (c) also governs how the hearing is conducted, including the authority of Hearing Officers, witnesses, additional information that may be required by the Hearing Panel, the requirement that a transcript of the proceeding be created and details related to such transcript, and details regarding the creation and maintenance of the record of the proceeding. Paragraph (c) also states that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. Finally, if the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under paragraph (d) of the Rule, the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Rule states that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Paragraph (d) also describes the content, scope and form of a suspension order. A suspension order shall be limited to ordering a Respondent to cease and desist from violating Rule 2170 and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 2170. Under the rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from. Finally, the order shall include the date and hour of its issuance. A suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), as described below. Finally, paragraph (d) requires service of the Hearing Panel's decision and any suspension order consistent with other portions of the rule related to service.

Paragraph (e) of Rule 9400 states that at any time after the Hearing Officers served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, paragraph (e) of Rule 9400 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions of the modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Finally, paragraph (f) provides that sanctions issued under Rule 9400 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Rule 2170– Disruptive Quoting and Trading Activity Prohibited

The Exchange currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rules 2110, 2111, 2120, and 2170. The Exchange proposes to adopt a new rule at Chapter III, Section 16, which would more specifically define and prohibit disruptive options quoting and trading activity on the Exchange. As noted above, the Exchange also proposes to apply the proposed suspension rules to Chapter III, Section 16.

Proposed Chapter III, Section 16 would prohibit Members from engaging in or facilitating disruptive options quoting and trading activity on the Exchange, as described in proposed Chapter III, Section 16(i) and (ii), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange believes, that with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

To provide proper context for the situations in which the Exchange proposes to utilize its authority, the Exchange believes it is necessary to describe the types of disruptive options quoting and trading activity that would cause the Exchange to use its authority. Accordingly, the Exchange proposes to adopt Chapter III, Section 16(i) and (ii) providing additional details regarding disruptive options quoting and trading activity. Proposed Chapter III, Section 16(i)(a) describes disruptive options quoting and trading activity containing many of the elements indicative of layering. It would describe disruptive options quoting and trading activity as a frequent pattern in which the following facts are present: (i) A party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and (ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and (iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the "Contra-Side Orders") that are subsequently executed; and (iv) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders. Proposed Chapter III, Section 16(i)(b) describes disruptive options quoting and trading activity containing many of the elements indicative of spoofing and would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (i) A party narrows the spread for a security by placing an order inside the national best bid or offer; and (ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed (b)(i) that narrowed the spread. The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above.[9] The Exchange further believes that the proposed descriptions will provide Members with clear descriptions of disruptive options quoting and trading activity that will help them to avoid engaging in such activities or allowing their clients to engage in such activities.

The Exchange proposes to make clear in proposed Chapter III, Section 16(ii), unless otherwise indicated, the descriptions of disruptive options quoting and trading activity do not require the facts to occur in a specific order in order for the rule to apply. For instance, with respect to the pattern defined in proposed Chapter III, Section 16(i)(a) it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, supply and demand must change following the entry of the Displayed Orders. The Exchange also proposes to make clear that disruptive options quoting and trading activity includes a pattern or practice in which some portion of the disruptive options quoting and trading activity is conducted on the Exchange and the other portions of the disruptive options quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues. In sum, proposed Chapter III, Section 16 coupled with Rule 9400 would provide the Exchange with authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange.

Below is an example of how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive options quoting and trading activity. After an initial investigation the Exchange would then contact the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive options quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the Member that would include details regarding the alleged violations as well as the proposed sanction. In such a case the proposed sanction would likely be to order the Member to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such Member unless and until such action is taken.

The Member would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding.

If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the Member to cease providing access to the client at issue and suspending such Member unless and until such action is taken. If such Member wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such Member could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the Member pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.

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[9] As previously noted herein, while the examples noted in the Purpose Section of this 19b4 [sic] are related to the equities market, the Exchange believes that this type of conduct should be prohibited for all Exchange members, equities and options. The Exchange believes that these patterns of disruptive and allegedly manipulative quoting and trading activity need to be addressed and the product should not limit the action taken by the Exchange. For this reason, the Exchange now proposes a corresponding options rule.

The Exchange reiterates that it already has broad authority to take action against a Member in the event that such Member is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent cases like the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have the authority to promptly initiate expedited suspension proceedings against any Member who has demonstrated a clear pattern or practice of disruptive options quoting and trading activity, as described above, and to take action including ordering such Member to terminate access to the Exchange to one or more of such Member's clients if such clients are responsible for the activity.

The Exchange recognizes that its authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of Respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the rule by its terms is limited to violations of Chapter III, Section 16, when necessary to protect investors, other Members and the Exchange. The Exchange will initiate disciplinary action for violations of Chapter III, Section 16, pursuant to Rule 9400. Further, the Exchange believes that the expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive options quoting and trading activity.

The Exchange also notes that that it may impose temporary restrictions upon the automated entry or updating of orders or quotes/orders as the Exchange may determine to be necessary to protect the integrity of the Exchange's systems pursuant to Rule 4611(c).[10] Also, pursuant to Rule 9555(a)(2)[11] if a member, associated person, or other person cannot continue to have access to services offered by the Exchange or a member thereof with safety to investors, creditors, members, or the Exchange, the Exchange's Regulation Department staff may provide written notice to such member or person limiting or prohibiting access to services offered by the Exchange or a member thereof. This ability to impose a temporary restriction upon Members assists the Exchange in maintaining the integrity of the market and protecting investors and the public interest.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of Rule 2170 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[14] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other Members and their customers. Also, the Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The expedited process would enable the Exchange to address the behavior with greater speed.

As explained above, the Exchange notes that it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing[15] to eliminate an express intent element that would not be proven on an expedited basis and would instead require a thorough investigation into the activity. As noted throughout this filing, the Exchange believes it is necessary for the protection of investors to make such modifications in order to adopt an expedited process rather than allowing disruptive quoting and trading activity to occur for several years.

Through this proposal, the Exchange does not intend to modify the definitions of spoofing and layering that have generally been used by the Exchange and other regulators in connection with actions like those cited above. The Exchange believes that the pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008 in the equities markets.[16] The Exchange believes that this proposal will provide the Exchange with the necessary means to enforce against such behavior in an expedited manner while providing Members with the necessary due process. The Exchange believes that its proposal is consistent with the Act because it provides the Exchange with the ability to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest from such ongoing behavior.

Further, the Exchange believes that adopting a rule applicable to Options Participants is consistent with the Act because the Exchange believes that this type of behavior should be prohibited for all members, not just equities members. The type of product should not be the determining factor, rather the behavior which challenges the market structure is the primary concern for the Exchange. While this behavior may not be as prevalent on the options market today, the Exchange does not believe that the possibility of such behavior in the future would not have the same market impact and thereby warrant an expedited process. The Exchange believes that treating all members, equities and options, in a uniform manner with respect to the type of disciplinary action that would be taken for violations of manipulative quoting and trading activity is consistent with the Act.

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[10] For example, such temporary restrictions may be necessary to address a system problem at a particular NOM Market Maker, NOM ECN or Order Entry Firm or at the Exchange, or an unexpected period of extremely high message traffic.

[11] *See* Rule 9555, entitled "Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services."

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[15] *See supra*, notes 4 and 5.

[16] *See* Section 3 [sic] herein, the Purpose section, for examples of conduct referred to herein.

The Exchange further believes that the proposal is consistent with Section 6(b)(7) of the Act,[17] which requires that the rules of an exchange "provide a fair procedure for the disciplining of members and persons associated with members . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof." Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act,[18] which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: Provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within Rule 9400. Importantly, as noted above, the Exchange will use the authority only in clear and egregious cases when necessary to protect investors, other Members and the Exchange, and in such cases, the Respondent will be afforded due process in connection with the suspension proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on its market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other Members and the Exchange. The Exchange also believes that it is important for all exchanges to be able to take similar action to enforce their rules against manipulative conduct thereby leaving no exchange prey to such conduct.

The Exchange does not believe that the proposed rule change imposes an undue burden on competition, rather this process will provide the Exchange with the necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Members with the necessary due process. The Exchange believes that adopting a rule applicable to Options Participants does not impose an undue burden on competition because this type of behavior should be prohibited for all members, not just equities members. The Exchange's proposal would treat all members, equities and options, in a uniform manner with respect to the type of disciplinary action that would be taken for violations of manipulative quoting and trading activity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and subparagraph (f)(6) of Rule 19b–4 thereunder.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2016–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2016–092. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2016–092, and should be submitted on or before July 28, 2016.

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[17] 15 U.S.C. 78f(b)(7).

[18] U.S.C. 78f(d)(1).

[19] 15 U.S.C. 78s(b)(3)(a)(iii).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16035 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78220; File No. SR–FINRA–2015–054]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 2 to Proposed Rule Change To Adopt FINRA Capital Acquisition Broker Rules

July 1, 2016.

I. Introduction

On December 4, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission (the "SEC" or "Commission") proposed rule change SR–FINRA–2015–054, pursuant to which FINRA proposed to adopt a rule set that would apply exclusively to firms that meet the definition of "capital acquisition broker" ("CAB") and that elect to be governed under this rule set (collectively, the "CAB Rules").

The Commission published the proposed rule change for public comment in the **Federal Register** on December 23, 2015.[1] The Commission received 17 comments in response to the proposed rule change.[2] On March 23, 2016, the Commission published in the **Federal Register** an order to solicit comments on the proposed rule change and to institute proceedings pursuant to Section 19(b)(2)(B) of the Securities Exchange Act of 1934 (the "Exchange Act")[3] to determine whether to approve or disapprove the proposed rule change.[4] The Commission received one comment in response to the Order Instituting Proceedings.[5]

In response to comments on the Notice of Filing, on March 29, 2016, FINRA filed Partial Amendment No. 1, which amended proposed CAB Rule 016(c)(2) to clarify that the definition of "capital acquisition broker" does not include any broker or dealer that effects securities transactions that would require the broker or dealer to report the transaction under the FINRA Rules 6300 Series, 6400 Series, 6500 Series, 6600 Series, 6600 Series, 6700 Series, 7300 Series or 7400 Series. The Commission published Partial Amendment No. 1 for comment in the **Federal Register** on April 15, 2016.[6] The Commission received one comment in response to the Partial Amendment No. 1.[7]

On June 28, 2016, FINRA filed Partial Amendment No. 2 to its proposed rule change in response to comments on the Notice of Filing. Partial Amendment No. 2 is described in Item II below, which has been prepared by FINRA. The Commission is publishing this notice to solicit comments on Partial Amendment No. 2 from interested persons.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

In response to comments on the Notice of Filing, the Order Instituting Proceedings, and Partial Amendment No. 1, FINRA filed this Partial Amendment No. 2 to amend proposed CAB Rule 016(c)(1)(F) regarding a CAB's authority to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder in connection with unregistered securities transactions. As revised by Partial Amendment No. 2, a CAB would be permitted to engage in:

> qualifying, identifying, soliciting, or acting as a placement agent or finder (i) on behalf of an issuer in connection with a sale of newly-issued, unregistered securities to institutional investors or (ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. For purposes of this subparagraph a "control person" is a person who has the power to direct the management or policies of a company through ownership of securities, by contract, or otherwise. Control will be presumed to exist if, before the transaction, the person has the right to vote or the power to sell or direct the sale of 25% or more of a class of voting securities or in the case of a partnership or limited liability company has the right to receive upon dissolution or has contributed 25% or more of the capital. For purposes of this subparagraph a "privately-held company" is a company that does not have any class of securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12 of the Exchange Act or with respect to which the company files, or is required to file, periodic information, documents, or reports under Section 15(d) of the Exchange Act.

The purpose of this proposed rule change is to provide a rule set for member firms that advise companies on mergers and acquisitions, advise issuers on raising debt and equity capital in private placements with institutional investors, or provide advisory services on a consulting basis to companies that need assistance analyzing their strategic and financial alternatives. Consistent with this purpose, this amendment would narrow the range of activities that a CAB would be permitted to engage in with regard to securities transactions involving institutional investors. Previously proposed CAB Rule 016(c)(1)(F) would have permitted a CAB to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder with respect to institutional investors in connection with purchases or sales of unregistered securities. This authority would have been limited by proposed CAB Rule 016(c)(2), which would have prohibited CABs from effecting securities transactions that would require the broker or dealer to report the transaction under the FINRA trade reporting rules.[8]

As amended, a CAB would be permitted to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder (i) on behalf of an issuer in connection with a sale of newly-issued, unregistered securities to institutional investors or (ii) on behalf of an issuer or a control person in connection with a change of control of a privately-held company. ''Control'' and ''privately-held company'' would have the same meanings as those terms had in the SEC staff's 2014 *M&A Brokers* no-action letter.[9]

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[21] 17 CFR 200.30–3(a)(12).

[1] Securities Exchange Act Release No. 76675 (December 17, 2015), 80 FR 79969 (December 23, 2015) (Notice of Filing File No. SR–FINRA–2015–054).

[2] Letters from Roger W. Mehle, Chairman and CEO, Archates Capital Advisors LLC, dated December 29, 2015; Daniel H. Kolber, President/CEO, Intellivest Securities, Inc., dated December 30, 2016; Arne Rovell, Coronado Investments, LLC, dated January 6, 2016; Donna DiMaria, Chairman of the Board of Directors, and Lisa Roth, Board of Directors, Third Party Marketers Association, dated January 12, 2016; Frank P. L. Minard, Managing Partner, XT Capital Partners, LLC, dated January 12, 2016; Timothy Cahill, President, Compass Securities Corporation, dated January 13, 2016; Mark Fairbanks, President, Foreside Distributors, dated January 13, 2016; Dan Glusker, Perkins Fund Marketing, LLC, dated January 13, 2016; Steven Jafarzadeh, CAIA, Managing Director, CCO Partner, Stonehaven, dated January 13, 2016; Richard A. Murphy, Manager, North Bridge Capital LLC, dated January 13, 2016; Ron Oldenkamp, President, Genesis Marketing Group, dated January 13, 2016; Michael S. Quinn, Member and CCO, Q Advisors LLC, dated January 13, 2016; Lisa Roth, President, Monahan & Roth, LLC, dated January 13, 2016; Howard Spindel, Senior Managing Director, and Cassondra E. Joseph, Managing Director, Integrated Management Solutions USA LLC, dated January 13, 2016; Sajan K. Thomas, President, and Stephen J. Myott, Chief Compliance Officer, Thomas Capital Group, Inc., dated January 13, 2016; Judith M. Shaw, President, North American Securities Administrators Association, Inc., dated January 15, 2016; and Peter W. LaVigne, Esq., Chair, Securities Regulation Committee, Business Law Section, New York State Bar Association, dated January 22, 2016.

[3] 15 U.S.C. 78s(b)(2)(B).

[4] Securities Exchange Act Release No. 77391 (March 17, 2016), 81 FR 15588 (March 23, 2016) (Order Instituting Proceedings on File No. SR–FINRA–2015–054).

[5] Letter from Howard Spindel, Senior Managing Director, and Cassondra E. Joseph, Managing Director, Integrated Solutions, dated April 8, 2016.

[6] Securities Exchange Act Release No. 77581 (April 11, 2016), 81 FR 22333 (April 15, 2016) (Notice of Filing of Partial Amendment No. 1 to File No. SR–FINRA–2015–054).

[7] Letter from Anonymous dated May 3, 2016.

[8] FINRA Rules 6300 Series, 6400 Series, 6500 Series, 6600 Series, 6700 Series, 7300 Series and 7400 Series.

Accordingly, under revised proposed CAB Rule 016(c)(1)(F), a CAB would be permitted to qualify, identify, solicit or act as a placement or agent only in two circumstances. First, a CAB could perform these functions on behalf of an issuer in connection with an initial offering of unregistered securities to institutional investors (as such term is defined in proposed CAB Rule 016(i)). Second, a CAB could perform these functions on behalf of an issuer or control person in connection with an initial or secondary securities transaction related to a change of control of a privately-held company. Except as described in proposed CAB Rules 016(c)(1)(F)(ii) and 016(c)(1)(G),[10] a CAB would not otherwise be permitted to engage in qualifying, identifying, soliciting, or acting as a placement agent or finder in connection with secondary securities transactions.

With this Partial Amendment No. 2, FINRA included (1) Exhibit 4, which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 2, marked to show additions to the text as proposed in the original filing as amended by Partial Amendment No. 1; and (2) Exhibit 5, which reflects the changes to the current rule text that are proposed in the proposed rule change, as amended by this Partial Amendment No. 2.

III. Date of Effectiveness of the Proposed Rule Change as Modified by Partial Amendments No. 1 and No. 2 and Timing for Commission Action

Within 180 days after the date of publication of the initial Notice of Filing in the **Federal Register** or within such longer period up to an additional 60 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will issue an order approving or disapproving such proposed rule change, as amended.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended by Partial Amendment No. 2, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2015–054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change. The Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–054 and should be submitted on or before July 18, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2016–16110 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78199; File No. SR–BX–2016–035]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Professional Designation

June 30, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2016, NASDAQ BX, Inc. (Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules at Chapter I, Section 1, entitled ''Definitions'' to add specificity to the definition of a Professional with respect to the manner in which the volume threshold will be calculated by the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[9] *See M&A Brokers*, 2014 SEC No-Act LEXIS 92 (January 31, 2014).

[10] Proposed CAB Rule 016(c)(1)(G) would allow a CAB to effect securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, in accordance with the terms and conditions of an SEC rule, release, interpretation or no-action letter that permits a person to engage in such activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of "Professional" at Chapter I, Section 1(49) to specify the manner in which the Exchange calculates orders to determine if an order should be treated as Professional.

Background

The definition of the term Professional at Chapter I, Section 1(49) currently states, "any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)." In order to properly represent orders entered on the Exchange Participants are required to indicate whether Public Customer[3] orders are "Professional" orders."[4] To comply with this requirement, Participants are required to review their Public Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Public Customer orders or Professional orders.[5]

The Exchange accepts orders routed from other markets that are marked Professional. The designation of Professional or Professional order does not result in any different treatment of such orders for purposes of Exchange rules concerning away market protection. That is, all non-broker or dealer orders, including those that meet the definition of Professional orders, are treated equally for purposes of Exchange away market protection rules.[6] The Exchange continues to believe that identifying Professional accounts based upon the average number of orders entered in qualified accounts is an appropriately objective approach to reasonably distinguish such persons and entities from retail investors or market participants.

Proposal

The Exchange proposes to count each order entered by a Professional toward the number of orders, regardless of the options exchange to which the order was routed in determining Professional orders.[7]

Cancel and Replace

A cancel and replace order is a type of order that replaces a prior order. The Exchange believes that the second order (the replacement order) should be counted as a new order. With respect to "single-strike algorithms," which are a series of cancel and replace orders in an individual strike which track the NBBO, these orders shall be counted as new orders.[8] The Exchange believes that because [sic] the Public Customer is specifically instructing the executing broker in the "single-strike algorithm" scenario to cancel and replace these orders. This type of activity is akin to market making in a Public Customer account and should be counted, as a new order.

Parent/Child Orders

An order that converts into multiple subordinate orders to achieve an execution strategy shall be counted as one order per side and series, even if the order is routed away.[9] An order that cancels and replaces a resulting subordinate order and results in multiple sides/series shall be counted as a new order on each side and series. For purposes of counting Public Customer orders, the manner in which the Public Customer submitted the order and whether the order was on the same side and series will determine if the order will count as one order. If one Public Customer order on the same side and series is subsequently broken-up by a broker into multiple orders for purposes of execution or routed away, this order will count as one order. The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional designation.

In order to make clear when orders will count as new orders, the Exchange offers the following scenarios as examples.

- The Exchange proposes to count multiple orders that were submitted by the member as separate orders as multiple orders.
- The Exchange proposes to count a single order submitted by a member, which was automatically executed in multiple parts by the trading system, as one order, because the member did not intervene to create multiple orders. Another example is where an order was entered in the trading system and only partially filled, the order would count as one order. The subsequent fills, which could be multiple executions, would not count as additional orders in determining the 390 limit. The manner in which the order is ultimately executed, as one order or multiple orders, should not itself determine whether the activity is that of a Professional; also the member did not intervene in that circumstance.
- The Exchange proposes to not count an order which reprices, for example because of a locked and crossed market, as a new order because the member did not intervene.
- The Exchange proposes to count orders, which result in multiple orders due to cancel and replacement orders, as new orders. This is because in this situation the member did intervene to create the subsequent orders.
- The Exchange proposes to count an order submitted by the Public Customer as a single order, on the same side and series, as a single order despite the fact that a broker broke-up the order into multiple orders for purposes of execution.

The Exchange notes that other options exchanges have issued notices which describe the manner in which those Exchanges believe thresholds should be computed for determining if an order qualifies as a Professional order.[10] The

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[3] The term "Public Customer" means a person that is not a broker or dealer in securities. *See* Chapter I, Section 1(50).

[4] The Exchange utilizes a special order origin code for Professional orders.

[5] Orders for any Public Customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional orders for the next calendar quarter. Members are required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While members are only required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a Public Customer for which orders are being represented as Public Customer orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the member and the member will be required to change the manner in which it is representing the Public Customer's orders within five days.

[6] *See* Exchange Rules at Chapter VI, Section 11, Chapter XII, Sections 2 and 3.

[7] All order types count toward the 390 orders on average per day.

[8] Cancel messages do not count as an order.

[9] An order which is placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities that is broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer. Strategies include volatility orders, for example.

[10] *See* NYSE Arca, Inc.'s and NYSE MKT LLC's Joint Regulatory Bulletin (RBO–15–03 and RBO–15–06, respectively) dated September 9, 2015; CBOE's Regulatory Circulator (RG10–126) dated

Exchange believes that there is industry confusion as to which orders count toward the 390 contract threshold. The Exchange's proposal is intended to provide clarity and to continue to promote consistency in the treatment of orders as Professional orders.

Below are some examples of the calculation of Professional orders.

Example #1

A Public Customer has an order to buy 100 calls at a volatility level of 35. The order then generates a child order resulting in a 1.00 bid for 100 options which is sent to exchange A. After the underlying stock price ticks up 2 cents the child order is then adjusted to reflect a 35 level volatility which in this case (50 delta) results in a 1.01 bid sent to Exchange A replacing the current 1.00 bid.

In determining the number of orders that attribute to the 390 order count, in this case, because the child order is being canceled and replaced in the "same series" this would only count as one (1) order for purposes of Professional designation calculation.

Example #2

A Public Customer has an order to buy 20k Vega at a 35 volatility level in symbol XYZ. The order then generates 50 child orders across different strikes. Throughout the day those 50 orders are adjusted as the stock moves resulting in the replacement of child orders to the tune of 5 times per order (50 x 5 cancels) resulting in 250 total orders generated to Exchange A.

In determining the number of orders that attribute to the 390 order count, in this case, because the child orders generated are across multiple series it would be necessary to count all 250 orders.

In addition to the above examples, the Exchange provides the below chart to demonstrate the manner in which it will count orders.

Single strike activity	Singular	Multiple
Public Customer order posted to 1 SRO Order Book	X	
Public Customer order posted to Multiple SRO Order Books simultaneously	X	
Cancel/Replace Activity	X	
Cancel/Replace Activity tracking NBBO		X

Singular—counts as a single order towards the 390 count.
Multiple—each order applies towards the 390 count.

The Exchange proposes to implement this rule on July 1, 2016 to provide market participants with advance notice for their quarterly calculations. The Exchange will issue an Options Trader Alert in advance to inform market participants of such date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting the consistent application of its rules by further defining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) for purposes of determining the Professional designation. Furthermore, the Exchange believes that specifying the manner in which the 390 threshold will be calculated within its Rules will provide members with certainty and provide them with insight as they conduct their own quarterly reviews for purposes of designating orders.

The Exchange believes that counting all orders toward the number of orders, regardless of the options exchange to which the order was routed, will promote the consistent application of its rules by making clear that all order types shall be counted as well as all orders for the purpose of determining whether the definition of Professional has been met.

Cancel and Replace

With respect to determining the Professional designation, a cancel and replace order that replaces a prior order shall be counted as a second order. An order that is filled partially or in its entirety or is a replacement order that is automatically canceled or reduced by the number of contracts that were executed will not count as second order because it was not replaced.[13] The Exchange believes that counting the replacement order as a second order is consistent with Exchange Rules because the replacement order is viewed as a new order with its own unique identifier.

The Exchange believes that counting cancel and replace orders with "single-strike algorithms," which are a series of cancel and replace orders in an individual strike which track the NBBO, as new orders is consistent with the Act because the Public Customer is specifically instructing the executing broker in the "single-strike algorithm" scenario to cancel and replace these orders. Tracking the NBBO[14] is akin to market making on the Exchange in a Public Customer account and should be counted as new orders. The Exchange believes that the Public Customers order designation should be reserved for retail Public Customers.

Parent/Child Orders

The Exchange's adoption of the Professional order was to treat orders in listed options per day on average during a calendar month in his or her own beneficial account differently from Public Customer orders for purposes of priority within the order Book and pricing.[15] For this reason, the Exchange is adopting rules concerning the computation of orders which convert into multiple subordinate orders for the purpose of determining the Professional designation. The Exchange's proposal to count multiple subordinate orders that achieve an execution strategy as one

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December 1, 2010; and the International Securities Exchange LLC's Regulatory Information Circular (2009–179) dated June 23, 2009.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Exchange Rules at Chapter VI, Section 1(e)(1). Cancel-replacement order shall mean a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will not retain the priority of the cancelled order except when the replacement order reduces the size of the order and all other terms and conditions are retained.

[14] Tracking the NBBO shall mean any parent order that consumes any self-regulatory organization order book data feed, or the OPRA feed, to generate automated child orders, and move with, or follow the Bid or Offer of the series in question.

[15] *See* BX Rules at Chapter VI, Section 10 and Chapter XV, Section 2.

order per side and series and count an order that cancels and replaces a resulting subordinate order and results in multiple sides/series as a new order is consistent with the Act, because the Exchange is distinguishing where the member is actively entering orders that result in multiple orders and canceling and replacing orders that result in multiple orders versus where the member had no control of the resulting executions. Allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional order designation. The same side of market distinction protects retail Public Customers. This practice is typically the type of transaction Public Customers execute versus a Professional trader. Multiple related orders resulting from a large order filled in part, or an order which is cancelled and replaced several times are considered part of a related order. The Exchange does not desire to count large orders filled in part as multiple orders because the member did not intervene in the outcome of the execution. An order that results in several separate and unrelated orders would be counted as multiple orders because the member intervened in this circumstance.

The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the computation of the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional designation. The Exchange notes that other options exchanges have issued notices describing the manner in which they believe that Professional order should be counted when determining if an order qualifies as a Professional order.[16] The Exchange believes that there is confusion as to which orders count toward the 390 contract threshold. The Exchange proposes to provide clarity to its Rules with specific guidance as to the computation of Professional orders, which it believes will promote consistency in the treatment of orders as Professional orders. The Exchange believes that this proposed guidance will promote consistency and permit the proper calculation of options orders to prevent members with high volume from receiving benefits reserved for Public Customer orders. The Professional designation focuses specifically on the number of orders generated.

Customer priority is one of the marketplace advantages provided to Public Customer orders on the Exchange. Customer priority means that Customer orders are given execution priority over non-Customer orders and quotations of specialists and BX Options Market Makers[17] at the same price. Another marketplace advantage afforded to Public Customer orders on the Exchange is that members are generally not assessed transaction fees for the execution of Public Customer orders. The purpose of these marketplace advantages is to attract retail order flow to the Exchange by leveling the playing field for retail investors over market Professionals.[18] The Exchange believes that permitting certain types of orders to be counted as a single order and other types of orders to be counted as multiple orders is consistent with the original intent of the Professional designation, which was to continue to provide Public Customer accounts with marketplace advantages and distinguish those accounts non-Professional retail investors from the Professionals accounts some non-broker-dealer individuals and entities have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities.[19]

Finally, the proposed guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional order volume. The Exchange's Rules may be similar to notices issued by NYSE Arca, Inc, NYSE MKT LLC ("NYSE MKT") and International Securities Exchange LLC ("ISE").

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the Exchange will uniformly apply the rules to calculate volume on all members in determining Professional orders. The designation of Professional orders would not result in any different treatment of such orders for purposes of the Exchange's Rules concerning order protection or routing to away exchanges. Also, SIFMA supports the guidance issued by NYSE Arca and NYSE MKT. The guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional order volume.

The Exchange is adopting similar counting methods the Exchange believes is currently being utilized by NYSE MKT, NYSE ARCA and ISE related to designation of Professional orders.

Counting All Orders

The Exchange believes that counting all orders entered by a Professional toward the number of orders, regardless of the options exchange to which the order was routed, does not create an undue burden on intra-market competition because this proposed rule change will be consistently applied to all members in determining Professional orders.

Cancel and Replace

The Exchange believes that its application of cancel and replace orders does not create an undue burden on intra-market competition because this application is consistent with Exchange Rules, where the replacement order is viewed as a new order. This treatment is consistent with the manner in which this order type is applied today within the Order Book.

Parent/Child Orders

The Exchange's treatment of subordinate orders does not create an undue burden on intra-market competition because allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional order designation which is to count distinct orders and focus on the number of orders generated.

The Exchange does not believe that the proposed rule change will impose an undue burden on inter-market competition because other exchanges have announced the intent to adopt similar guidance.[20] The Exchange believes that disparate rules regarding Professional order designation, and a lack of uniform application of such rules, does not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that it is therefore prudent and necessary to conform its rules to that of other options exchanges for purposes of calculating the threshold volume of orders to be designated as a Professional. This is particularly true where the Exchange's third-party routing broker-dealers are members of several exchanges that have rules requiring Professional order designations.

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[16] *See* NYSE Arca, Inc.'s and NYSE MKT LLC's Joint Regulatory Bulletin (RBO–15–03 and RBO–15–06, respectively) dated September 9, 2015; The Chicago Board Options Exchange, Incorporated's Regulatory Circulator (RG10–126) dated December 1, 2010; and the International Securities Exchange LLC's Regulatory Information Circular (2009–179) dated June 23, 2009.

[17] A BX Options Market Maker means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VII of these Rules. *See* BX Rules at Chapter I, Section 1(a)(9).

[18] Market Professionals have access to sophisticated trading systems that contain functionality not available to Public Customers, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously and order and risk management tools.

[19] For example, some broker-dealers provided their Professional customers with multi-screened trading stations equipped with trading technology that allows the trader to monitor and place orders on all six options exchanges simultaneously. These trading stations also provide compliance filters, order managements tools, the ability to place orders in the underlying securities, and market data feeds.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and subparagraph (f)(6) of Rule 19b–4 thereunder.[22] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[23] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[24]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that it has considered a substantially similar proposed rule change filed by CBOE and PHLX which it approved after a notice and comment period.[25] This proposed rule change does not raise any new or novel issues from those considered in the CBOE and PHLX proposals. Based on the foregoing, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative date so that the proposal may take effect upon filing.[26]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[27] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BX–2016–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BX–2016–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2016–035 and should be submitted on or before July 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16026 Filed 7–6–16; 8:45 am]

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[20] *See supra* note 16.

[21] 15 U.S.C. 78s(b)(3)(a)(iii).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] *Id.*

[25] *See* Securities Exchange Act Release Nos. 77450 (March 25, 2016) (Order Approving SR–CBOE–2016–005); 77449 (March 25, 2016), 81 FR 18665, (March 31, 2016) (Order Approving SR–Phlx–2016–10).

[26] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(2)(B).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78202; File No. SR–ISE Mercury–2016–12]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

June 30, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE Mercury proposes to amend its rules to extend a pilot program to quote and to trade certain options classes in penny increments ("Penny Pilot Program"). The text of the proposed rule change is available on the Exchange's Web site *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq–100 Index Tracking Stock ("QQQQ"), the SPDR S&P 500 Exchange Traded Fund ("SPY") and the iShares Russell 2000 Index Fund ("IWM"), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2016. The Exchange proposes to extend the Penny Pilot Program through December 31, 2016, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2016. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning December 1, 2015, and ending May 31, 2016). This filing does not propose any substantive changes to the Penny Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[3] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[4] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[5] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative prior to 30 days after the date of the filing.[9] However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[11]

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(8).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov.* Please include File No. SR–ISE Mercury–2016–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE Mercury–2016–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of ISE Mercury. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE Mercury–2016–12 and should be submitted by July 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

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[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78216; File No. SBSDR–2016–02]

Security-Based Swap Data Repositories; DTCC Data Repository (U.S.) LLC; Notice of Filing of Application for Registration as a Security-Based Swap Data Repository

June 30, 2016.

I. Introduction

On April 6, 2016 and as amended on April 25, 2016, DTCC Data Repository (U.S.) LLC ("DDR") filed with the Securities and Exchange Commission ("Commission") a Form SDR seeking registration as a security-based swap data repository ("SDR") under Section 13(n) of the Securities Exchange Act of 1934 ("Exchange Act") [1] and the Commission's rules promulgated thereunder.[2] DDR states that it proposes to operate as a registered SDR for security-based swap ("SBS") transactions in the credit, equity, and interest rates [3] derivatives asset classes. The Commission is publishing this notice to solicit comments from interested persons regarding DDR's Form SDR,[4] and the Commission will consider any comments it receives in making its determination whether to grant DDR registration as an SDR.[5]

II. Background

A. SDR Registration, Duties and Core Principles, and Regulation SBSR

Section 763(i) of the Dodd-Frank Act added Section 13(n) to the Exchange Act, which requires an SDR to register with the Commission and provides that, to be registered and maintain registration as an SDR, an SDR must comply with certain requirements and "core principles" described in Section 13(n) and any requirement that the Commission may impose by rule or regulation.[6]

The Commission adopted Exchange Act Rules 13n–1 through 13n–12 ("SDR rules"), which require an SDR to register with the Commission and comply with certain "duties and core principles." [7] Among other requirements, the SDR rules require an SDR to collect and maintain accurate SBS data and make such data available to the Commission and other authorities so that relevant authorities will be better able to monitor the buildup and concentration of risk exposure in the SBS market.[8]

Concurrent with the Commission's adoption of the SDR rules, the Commission adopted Regulation SBSR,[9] which, among other things, provides for the reporting of SBS information to registered SDRs, and the public dissemination of SBS transaction, volume, and pricing information by registered SDRs. In addition, Regulation SBSR requires each registered SDR to register with the Commission as a securities information processor.[10]

B. Standard for Granting SDR Registration

To be registered with the Commission as an SDR and maintain such registration, an SDR is required (absent an exemption) to comply with the requirements and core principles described in Exchange Act Section 13(n), as well as with any requirements that the Commission adopts by rule or regulation.[11] Exchange Act Rule 13n–1(c)(3) provides that the Commission shall grant the registration of an SDR if it finds that the SDR is so organized, and has the capacity, to be able to (i) assure the prompt, accurate, and reliable performance of its functions as an SDR; (ii) comply with any applicable provisions of the securities laws and the rules and regulations thereunder; and (iii) carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange Act and the rules and regulations thereunder.[12] The Commission must deny registration of an SDR if it does not make such a finding.[13]

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[1] 15 U.S.C. 78m(n)(3).

[2] 17 CFR 240.13n–1 through 240.13n–12.

[3] DDR seeks to include in its application the "rates" asset class based on feedback from potential DDR participants who have identified certain types of transactions which will be reported through the interest rate infrastructure within the industry and that the industry participants have identified as falling under the definition of a SBS. The Commission notes that DDR's application is for registration as a SBS data repository, which the Exchange Act defines as a "person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps." 15 U.S.C. 78c(a)(75).

[4] DDR filed its Form SDR, including the exhibits thereto, electronically with the Commission. The descriptions set forth in this notice regarding the structure and operations of DDR have been derived, excerpted, and/or summarized from information in DDR's Form SDR application, and principally from DDR's Rulebook (Exhibit HH.2), which outlines the applicant's policies and procedures designed to address its statutory and regulatory obligations as an SDR registered with the Commission. DDR's Form SDR application and non-confidential exhibits thereto are available on [appropriate EDGAR reference to be inserted]. In addition, the public may access copies of these materials on the Commission's Web site at: [appropriate Web site address to be inserted].

[5] DDR's Form SDR application also constitutes an application for registration as a securities information processor. *See* Exchange Act Release No. 74246 (Feb. 11, 2015), 80 FR 14438, 14458 (Mar. 19, 2015) ("SDR Adopting Release").

[6] 15 U.S.C. 78m(n).

[7] *See* SDR Adopting Release, 80 FR 14438.

[8] *See* SDR Adopting Release, 80 FR at 14450.

[9] *See* Exchange Act Release No. 74244 (Feb. 11, 2015), 80 FR 14563 (Mar. 19, 2015) ("Regulation SBSR Adopting Release").

[10] *See* Regulation SBSR Adopting Release, 80 FR at 14567.

In determining whether an applicant meets the criteria set forth in Rule 13n–1(c), the Commission will consider the information reflected by the applicant on its Form SDR, as well as any additional information obtained from the applicant. For example, Form SDR requires an applicant to provide, among other things, contact information, a list of the asset class(es) for which the applicant is collecting and maintaining data or for which it proposes to collect and maintain data, a description of the functions that it performs or proposes to perform, and general information regarding its business organization.[14] This, and other information reflected on the Form SDR, will assist the Commission in understanding the basis for registration as well as the SDR applicant's overall business structure, financial condition, track record in providing access to its services and data, technological reliability, and policies and procedures to comply with its statutory and regulatory obligations.[15] Furthermore, the information requested in Form SDR will enable the Commission to assess whether the SDR applicant would be able to comply with the federal securities laws and the rules and regulations thereunder, and ultimately whether to grant or deny an application for registration.[16]

III. DDR Application for Registration

DDR currently operates as a trade repository under the regulatory framework of other authorities. Specifically, DDR is a swap data repository regulated and provisionally registered by the Commodity Futures Trading Commission ("CFTC").[17] In that capacity, DDR has been accepting derivatives data for the commodity, foreign exchange, interest rate, and credit asset classes in the United States since December 2012.[18] Additionally, in 2014, DDR was approved by the Ontario Securities Commission,[19] the Autorité des marchés financiers,[20] and the Manitoba Securities Commission [21] as a Canadian Trade Repository to serve the commodity, credit, equity, interest rate, and foreign exchange asset classes.[22]

A. Corporate Structure and Governance Arrangements

DDR is a New York limited liability company, and is a wholly owned subsidiary of DTCC Deriv/SERV LLC, which, in turn, is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC").[23] DDR is managed by a Board of Directors ("Board") responsible for overseeing its operations.[24] The Board (directly or by delegating certain responsibilities to its committees) fulfills its responsibilities under its charter and DDR's mission statement by: (i) Overseeing management's activities in managing, operating, and developing DDR as a firm and evaluating management's performance of its responsibilities; (ii) ratifying management's selection of the CEO and providing advice and counsel to the CEO; (iii) providing oversight of the performance of the CEO and of DDR to evaluate whether the business is being appropriately managed; (iv) setting expectations about DDR's tone and ethical culture and reviewing management efforts to instill an appropriate tone and culture; (v) reviewing and approving DDR's financial objectives and major corporate plans and actions; (vi) providing guidance to the CEO and to management in formulating corporate strategy and approving strategic plans; (vii) providing oversight of risk assessment and risk management monitoring processes; (viii) providing input and direction to governance structures and practices to position the Board to fulfill its duties effectively and efficiently consistent with DDR's principles of governance; (ix) providing oversight and guidance regarding the design of informational reporting to the Board and relevant regulators; (x) adopting principles governing new initiative approval processes and overseeing DDR's processes relating to new business selection and development of new businesses and new or expanded products and services, including guidelines for the analyses supporting any material operational or risk management changes that are proposed by management; (xi) providing oversight of DDR's internal and external audit processes, financial reporting, and disclosure controls and procedures, including approving major changes in auditing and accounting principles and practices; (xii) fostering DDR's ability to ensure compliance with applicable laws and regulations including derivatives, securities, and corporation laws and other applicable regulatory guidance and international standards; (xiii) ensuring that in DDR's decision-making process an Independent Perspective as defined in Section 49.2 of the CFTC's regulations, is considered;[25] and (xiv) performing such other functions as the Board believes appropriate or necessary, or as otherwise prescribed by rules or regulations.[26]

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[11] *See* Exchange Act Section 13(n)(3), 15 U.S.C. 78m(n)(3).

[12] *See* 17 CFR 240.13n–1(c)(3).

[13] *See id.*

[14] *See* SDR Adopting Release, 80 FR at 14458.

[15] *See id.*

[16] *See* SDR Adopting Release, 80 FR at 14458–59.

[17] *See* Order of Provisional Registration, In the Matter of the Request of DTCC Data Repository (U.S.), LLC for Provisional Registration as a Swap Data Repository Pursuant to Section 21 of the Commodity Exchange Act and Part 49 of the Commodity Futures Trading Commission's Regulations (Sept. 19, 2012), *available at http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/dtccbodsonletter091912.pdf;* Order Adding Asset Class, In the Matter of the Request of DTCC Data Repository (U.S.) LLC to Amend Its Form SDR to Add the Other Commodity Asset Class Pursuant to Part 49 of the Commission's Regulations (Dec. 3, 2012), *available at http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/dtccsdrbodsonltr120312.pdf.*

[18] *See* Press Release, DTCC, DTCC Swap Data Repository Real-Time Reporting Now Live (Jan. 03, 2013), *available at http://www.dtcc.com/news/2013/january/03/swap-data-repository-real-time.*

[19] *See* Ontario Securities Commission, Order (Section 21.2.2 of the Securities Act), in the Matter of the Securities Act, R.S.O. 1990, Chapter S.5, as amended, and in the Matter of DTCC Data Repository (U.S.) LLC (Sept. 19, 2014), *available at http://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20140923_dtcc-data-repository.htm.*

[20] *See* Autorité des marchés financiers, Decision 2014–PDG–0110, Bulletin 2014–09–25, Vol. 11, n°38 (Sept. 23, 2014), *available at https://www.lautorite.qc.ca/files/pdf/bulletin/2014/vol11no38/vol11no38_7.pdf.*

[21] *See* Manitoba Securities Commission, Order No. 7013 (Oct. 23, 2014), *available at http://docs.mbsecurities.ca/msc/oe/en/105125/1/document.do.*

[22] Other trade repository subsidiaries of the Depository Trust & Clearing Corporation ("DTCC") operate in Europe, Japan, Hong Kong, Singapore, and Australia. *See generally http://dtcc.com/derivatives-services/global-trade-repository.*

[23] *See* Exhibit HH.2, Section 2.1. DTCC is the parent company of a variety of entities, including three clearing agencies registered under Section 17A of the Exchange Act and that have been designated as systemically important by the Financial Stability Oversight Council under Title VIII of the Dodd-Frank Act (*i.e.,* the National Securities Clearing Corporation, the Fixed Income Clearing Corporation, and the Depository Trust Company).

[24] *See id.*

[25] The CFTC has defined the term "Independent Perspective" to mean "a viewpoint that is impartial regarding competitive, commercial, or industry concerns and contemplates the effect of a decision on all constituencies involved." 17 CFR 49.2(a)(6).

According to DDR, the number of directors on the Board is determined by DTCC Deriv/SERV LLC ("DTCC Deriv/SERV") as the sole LLC member of DDR.[27] DDR represents that DTCC Deriv/SERV will strive to include on the Board an equal number of representatives of U.S. and non-U.S. domiciled firms.[28] DDR represents that the Board is composed of individuals from the following groups: Employees of DDR's users (either fees-paying users or end users) with derivatives industry experience, buy-side representatives, independents, and members of DTCC's senior management or DTCC's Board of Directors, with the understanding that at least two Board members will be DTCC senior management or DTCC Board members.[29] DDR represents that DTCC Deriv/SERV's Nominating Committee shall periodically review the Board's composition to assure that the DDR directors possess the skills required to direct and oversee management in the best interests of its shareholders and other stakeholders, with these skills including derivatives industry experience, risk management experience, business specialization, technical skills, industry stature, and seniority and experience at their own organizations.[30]

Additionally, DDR represents that it welcomes suggestions from market participants of proposed or alternative candidates to serve on the DDR Board, which may be submitted through the notices procedures described in the Operating Procedures of DDR's Rulebook.[31]

DDR's Rulebook provides that its Chief Compliance Officer ("CCO") is appointed by the Board and reports directly to the chief executive officer of DDR.[32] The Board is responsible for the appointment and removal of the CCO and approval of CCO compensation, which is at the discretion of the Board and effected by majority vote.[33] In addition, the Board shall meet with the CCO at least annually.[34] According to DDR, the CCO also works directly with the Board in certain instances, for example, when resolving conflicts of interest.[35] DDR represents that the CCO's responsibilities include, but are not limited to, the following items: (i) Oversee and review DDR's compliance with the applicable regulations; (ii) establish and administer written policies and procedures reasonably designed to prevent violation of the applicable regulations; (iii) take reasonable steps to ensure compliance with applicable regulations relating to agreements, contracts or transactions; (iv) establish procedures for the remediation of non-compliance issues identified by the CCO through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint; (v) notify the Board as soon as practicable upon becoming aware of a circumstance indicating that DDR, or an individual acting on its behalf, is in non-compliance with the applicable laws of a jurisdiction in which it operates and either: (a) The non-compliance creates a risk to a DDR User; [36] (b) the non-compliance creates a risk of harm to the capital markets in which it operates; (c) the non-compliance is part of a pattern of non-compliance; or (d) the non-compliance may have an impact on DDR's ability to carry on business as a trade repository in compliance with applicable law; (vi) establish and follow appropriate procedures for the handling, management response, remediation, retesting and closing of noncompliance issues; (vii) establish and administer a written code of ethics; and (viii) prepare and sign an annual compliance report in accordance with applicable regulations and associated recordkeeping.[37]

DDR directors must comply with DDR's Board Code of Ethics and Conflicts of Interest Policy (the "Code"), which is intended to focus directors on their duties as fiduciaries and provide guidance to directors to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, help foster a culture of honesty and accountability, and address actual and potential conflicts of interest.[38] In addition, each director is required to complete a certificate attesting to compliance with DDR's Code upon becoming a director, and, thereafter, on an annual basis. According to DDR's Code, key responsibilities for directors include: (i) Acting honestly, in good faith and in the best interests of DDR and all of the users of DDR; (ii) using best efforts to avoid conflicts between personal and professional interests as they relate to DDR where possible; (iii) disclosing any conflicts and otherwise pursuing the ethical handling of conflicts (whether actual or apparent) when conflicts or the appearance of conflicts are unavoidable; (iv) complying with all applicable laws, regulations and DDR policies; (v) promptly reporting any violations of the Code to the Chairman of DDR's Board or to DDR's counsel and DDR's CCO; (vi) seeking guidance where necessary; and (vii) being accountable personally for adherence to the Code.[39]

B. Description of DDR's SDR Service

DDR has applied to register as an SDR with the Commission to accept data in respect of all SBS transactions in the credit, equity, and interest rates derivatives asset classes.[40]

DDR represents that, if registered with the Commission, it would, among other things: (i) Perform all of the required functions of an SDR under the Commission's Rules 13n–1 through 13n–11; (ii) accept, from or on behalf of Users, transaction and life-cycle data for SBS as specified in the Commission's Regulation SBSR, as and when required to be reported to an SDR thereunder; (iii) verify and maintain swap and SBS data as required by such regulations; (iv) publicly disseminate SBS data as and when required under the Commission's Regulation SBSR, either directly or through one or more third parties; (v) provide access to swap and SBS data to appropriate regulators; and (vi) generate reports with respect to transaction data maintained in DDR, in each case as specified in further detail in DDR's Operating Procedures and applicable publications.[41]

C. Access

DDR represents that it would provide access to its SDR service on a fair, open and equal basis.[42] According to DDR, access to and usage of its SDR service would be available to all market participants that engage in SBS transactions, and DDR does not and would not bundle or tie its SDR services with any other services.[43] DDR represents that to participate in its SDR services, each User would be required to (i) enter into a User Agreement in one of the forms provided by DDR and (ii) agree to be bound by the terms of the User Agreement and DDR's Operating Procedures.[44] According to DDR, an entity would be permitted to view the records relating to an individual transaction if it is: (i) A counterparty or an authorized agent of a counterparty to the transaction; (ii) a regulator and the transaction is reportable to that regulator; or (iii) a third-party agent submitter of the transaction, provided that agents who are submitters will not be able to view the current positions, unless authorized by a counterparty to the transaction, but will be able to see the submission report only for the purpose of viewing the success or failure of messages submitted by such agents.[45] DDR represents that it shall retain exclusive control over the system through which its SDR services are provided.[46]

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[26] *See* Exhibit D.2 (DDR Mission Statement and Board Charter).

[27] *See* Exhibits D (governance narrative), D.2, and HH.2, Section 2.2.

[28] *See* Exhibits D and D.2.

[29] *See id.*; *see also* Exhibit HH.2, Section 2.2. DDR states that the Board will include appropriate representation by individuals who are independent as specified by applicable regulations. *See id.*

[30] *See* Exhibit D.

[31] *See* Exhibit HH.2, Section 2.2 and attached Operating Procedures.

[32] *See* Exhibit HH.2, Section 2.3.

[33] *See id.*

[34] *See id.*

[35] *See id.*

[36] DDR defines the term "User" to mean an entity that has executed a DDR User Agreement, which allows for participation in one or more DDR services or systems. *See* Exhibit HH.2, Section 12.

[37] *See* Exhibit HH.2, Section 2.3.

[38] *See* Exhibit D.4 (DDR Board Code of Ethics).

[39] *See id.*

[40] *See* DDR Form SDR, Item 6; *see also* Exhibit HH.2, Section 3.1.

[41] *See* Exhibit HH.2, SDR Appendix to the DDR Operating Procedures.

[42] *See* Exhibits U, V, Y, and HH.2, Section 1.1.

DDR represents that it may summarily terminate a User's account and access to SDR services when the Board determines that: (a) The User has materially breached its User Agreement, DDR's Operating Procedures, or the rules contained in its Rulebook, which threatens or may cause immediate harm to the normal operation of DDR's system, or any applicable law including those relating to the regulations administered and enforced by the U.S. Department of Treasury's Office of Foreign Assets Control or the Canadian Government Office of the Superintendent of Financial Institutions; or (b) the User's account or User's IT system is causing material harm to the normal operation of DDR's system.[47] According to DDR, the following actions must take place before DDR staff initiates any actions which may result in a User's termination of access to the DDR system and, specifically, SDR services: (i) DDR senior management, as well as DDR's counsel and CCO, must be involved in any decision to involuntarily terminate a User; and (ii) the Chairman of the Board of DDR must be notified in advance of any involuntary termination.[48] DDR represents that, upon a summary termination of a User's access pursuant to its rulebook, DDR shall, as soon as possible, notify the impacted User of the termination in writing or via email, with such notice stating, to the extent practicable, in general terms how pending transaction submissions and other pending matters will be affected and what steps are to be taken in connection therewith.[49]

D. Use of Data

DDR represents that its services would be available to all market participants on a fair, open and equal basis. DDR represents that a market participant must be on-boarded as a DDR User to be granted access to the DDR system, receive trade information, confirm or verify transactions, submit messages, or receive reports.[50] For those market participants that on-board, DDR would provide a mechanism for Users to access the DDR system to confirm and verify transactions and provide Unique Identification Code ("UIC") information as required under its procedures. Additionally, DDR represents that access to U.S. swap or SBS data maintained by DDR to market participants is generally prohibited except to: (i) Either counterparty to that particular swap or SBS; (ii) authorized third-party service providers or other parties specifically authorized by the User or counterparty pursuant to DDR's Rulebook; (iii) or to appropriate domestic or foreign regulators in accordance with applicable regulation and DDR's Rulebook.[51]

E. Asset Classes Accepted; Submission Requirements; Validation

DDR has represented that it would accept data in respect of all SBS trades in the credit equity, and interest rate[52] derivatives asset classes.[53] DDR has represented that Users would be required to submit trade information in the data format required by DDR. DDR would accept data using the following open-source structured data formats: Financial Products Markup Language ("FpML") and Comma-separated Value ("CSV") file.[54]

Exhibits GG.2 (for credit derivatives), GG.4 (for equity derivatives), and GG.6 (for interest rates) to DDR's application enumerate the required fields and acceptable values for the submission of trade information into the DDR system. Upon submission of a transaction, DDR will perform validation checks to ensure that each submitted record is in the proper format and will also perform validation and consistency checks against certain data elements, including, for example, sequencing of time and date fields (*e.g.*, the termination date must be greater than the trade date).[55] These validation types include:

- Schema validations—check that a submission is consistent with the accepted format (*i.e.*, CSV is valid, the fields are formatted correctly);
- Core validations—the basic checks that ensure the submission can be accepted into the SDR (*i.e.*, Permission, USI/UTI lock, transaction and action type consistency validations);
- Business validation—applied at the point of in-bound submission processing to ensure integrity and logical consistency. These validations will ensure that the messages are well formed and provide a logical and complete description of the core trade economics and ensure that DDR does not degrade the quality of the information held within the repository by allowing incomplete or illogical trade descriptions to be accepted and stored; and
- Regulatory validations—regulatory-specific validations applied following the normal business validations. (For example, if the same field is required by one jurisdiction and is optional for another, the jurisdiction requiring the field would have a regulatory validation to check for the field.)[56]

DDR further represents that it would accept or reject transactions based on its validation process.[57] DDR's policies and procedures state that acceptance messages are called ACKs (acceptance) and rejection messages are called

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[43] *See* Exhibit HH.2, Section 1.1.

[44] *See* Exhibit HH.2, Section 1.2.

[45] *See* Exhibit HH.2, Section 1.3.

[46] *See id.*

[47] *See* Exhibit HH.2, Section 10.3.1.

[48] *See id.*

[49] *See id.* Because persons applying to be SDRs are also applying to be SIPs with the Commission, the procedures for notifying the Commission of any prohibitions or limitations of access to services as provided in Section 11A(b)(5)(A) would apply. *See* SDR Adopting Release, 80 FR at 14482 ("Rule 909 of Regulation SBSR, which the Commission is concurrently adopting in a separate release, requires each registered SDR to register as a SIP, and, as such, Exchange Act Section 11A(b)(5) governs denials of access to services by an SDR. This section provides that '[i]f any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission.' Accordingly, an SDR must promptly notify the Commission if it prohibits or limits access to any of its services to any person.").

[50] *See* Exhibit HH.2, Section1.1.

[51] *See* Exhibit HH.2, Section 6.3. With respect to regulator access, DDR also represents that pursuant to applicable law, the designated regulators (which is defined to include regulators which supervise DDR, including the Commission and CFTC) shall be provided with direct electronic access to DDR data reported to DDR in satisfaction of such regulator's regulatory mandate to satisfy their legal and regulatory obligations. *See id.*, Sections 6.2 and 12.

[52] *See* n.3 *supra.*

[53] *See* Form SDR and Exhibit HH.2, Section 3.1.

[54] *See* Exhibit GG.3.

[55] *See* Exhibit HH.2, Section 10.1.1.

[56] *See* Exhibit GG.3.

[57] *See* Exhibit GG.3.

NACKs (negative acceptance).[58] Where a transaction is accepted, both the submitting party and its on-boarded counterparty would receive electronic ACK messages. Where a transaction was not accepted, the submitting party would receive an electronic NACK message along with an associated error code so that they can correct the transaction and retransmit to DDR. Where a transaction is accepted but fails one of the jurisdictional (*i.e.*, regulatory) validations, the submitting party will receive an electronic notification along with the associated error code so it can correct the transaction and retransmit to DDR.[59]

DDR represents that DDR may reject a transaction record submitted due to the submission failing to meet DDR validations, including but not limited to the submission failing to be in a format that can be ingested by DDR, failing to meet jurisdictional (*i.e.*, regulatory) requirements or failing to provide required data elements.[60] DDR further represents that a rejected submission is deemed not to have been submitted at all with respect to reporting to the jurisdiction for which it was rejected, and that it is possible that one transmission is submitted to comply with reporting in more than one jurisdiction and may be acceptable for one jurisdiction, but rejected for the other.[61]

In connection with the reporting of "pre-enactment and transitional SBS," DDR represents that it will accept the following types of historical trades: (i) "Historical Expired," which are pre-enactment SBS executed before July 21, 2010 but expired or terminated before the compliance date for Regulation SBSR, (ii) "Historical," which are transitional SBS executed after July 21, 2010 but expired or terminated before the compliance date for Regulation SBSR, and (iii) "Backload," which are pre-enactment SBS or transitional SBS in existence on or after the compliance date for Regulation SBSR.[62] DDR states that it does not validate whether or not the historical expired trade satisfies the Commission's definition of an expired pre-enactment or transitional swap, and that the Historical and Historical Expired trades will be subject to a minimal set of validations in order for the submission to be accepted by DDR, which will focus on core fields necessary for the system to ingest the trade (including a valid Unique Transaction Identifier).[63] DDR further states that Backload trades will have the standard validations that are applied on all SBS submissions and must meet the requirements in order for the submission to be ingested and reported to the Commission.[64]

F. Verification of Transaction Data

DDR represents that its SDR services verification processes are designed to reasonably establish that the transaction data that has been submitted to DDR is complete and accurate.[65] Once a position is established either through a snapshot or DDR's own calculation of events from transaction records, the terms of the position are designated as either verified, disputed, pending verification, or deemed verified.[66]

According to DDR, a transaction record is verified if it (i) is submitted by a Trusted Source (which is defined as an entity, which has entered into a User agreement, been recognized as a Trusted Source by DDR and provides the definitive report of a given position),[67] (ii) is a trade between affiliated parties, (iii) is submitted from an affirmation or confirmation platform, or (iv) was executed on an electronic trading facility.[68] In addition, the non-reporting User is responsible for verifying the accuracy of the information that has been submitted by the reporting party User. DDR represents that a non-reporting User can verify the accuracy of such information by sending a verification message indicating that it verifies or disputes each position where it is identified as the counterparty.[69]

DDR represents that it would attempt to contact counterparties to a trade reported to DDR who are not Users (a "Non-User"), where such party's LEI is provided and there is email contact information available to DDR in the information or static data maintained by the DTCC trade repositories [70] about their Users, to notify the non-User that a trade has been reported on which it might have been named a counterparty and it must on-board to DDR to verify the accuracy of the information submitted and provide any missing information such as UICs, if applicable.[71] DDR represents that, if no LEI is provided or if the email information is not available (for example, under local privacy laws or contractual obligations between the counterparty and the trade repository with which it has contracted as a User), it would take no further action.[72] In addition, DDR will not verify the accuracy of the email, nor follow up if an email bounces back.[73] DDR represents that it will provide the Commission and CFTC with a monthly status of the outreach to Non-Users.[74]

The DDR system will provide trade detail reports that will enable Users to view all transaction records, which will allow Users to reconcile the transaction records in the SDR services to their own risk systems.[75] DDR's policies and procedures provide that, in the event that both counterparties to a trade agree that data submitted to DDR contains erroneous information (*e.g.*, through a mutual mistake of fact), such Users may each submit a cancel record, effectively cancelling the incorrect transaction record.[76] If a trade record has been submitted by only one counterparty and it is determined by the submitting User that it is erroneous, the submitting User may submit a cancel record.[77] A User may cancel only its own submitted record and cannot cancel a record where it is not the submitting party of the record.[78] DDR shall maintain a record of all corrected errors pursuant to applicable regulations and such records shall be available upon request to the applicable designated regulator.[79]

G. Disputed Trade Data

Under DDR's policies and procedures, Users are responsible for resolving any disputes between themselves uncovered during any reconciliation process and, as appropriate, for submitting correct information.[80] If a User disputes a transaction record alleged to apply to it by the counterparty, or disputes any of the terms within the alleged transaction, the User shall register such dispute by submitting a "dispute" message.[81] If such User fails to register such dispute within 48 hours of the relevant trade detail report being issued, the record will be marked as "deemed verified" in the DDR system.[82] All reports and trade records provided to regulators will include the status of these transaction records, including dispute and verification status.[83] Where DDR has received conflicting or inconsistent records from more than one submitter in respect of a particular transaction (such as from a security-based swap execution facility and a reporting party User), DDR would maintain all such records (unless cancelled or modified in accordance with the terms of the Rulebook) and make such records available to designated regulators in accordance with the terms of the User Agreement and applicable law.[84]

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[58] *See id.*

[59] *See id.*

[60] *See id.*

[61] *See* Exhibit HH.2, Section 1.2 and Exhibit GG.3.

[62] *See* Exhibit GG.3.

[63] *See id.*

[64] *See id.*

[65] *See* Exhibit HH.2, Section 3.3.4.

[66] *See id.* A "snapshot" refers to a message that reflects the current state of the trade, which DDR refers to as the trade's position.

[67] *See* Exhibit HH.2, Section 12.

[68] *See* Exhibit HH.2. Sections 3.3.4 and 3.3.2.1 and Exhibit GG.3.

[69] *See id.*

[70] DTCC operates trade repositories in a number of other jurisdictions. *See* n.22 *supra.*

[71] *See* Exhibit HH.2. Sections 3.3.4 and 3.3.2.1 and Exhibit GG.3.

[72] *See id.*

[73] *See id.*

[74] *See* Exhibit HH.2, Section 3.3.4.1.

[75] *See* Exhibit HH.2, Section 10.1.2.

[76] *See* Exhibit HH.2, Section 10.1.1.

[77] *See id.*

[78] *See* Exhibit HH.2, Section 10.1.1.

[79] *See id.*

[80] *See* Exhibit HH.2, Section 10.1.2.

[81] *See id.*

H. Application and Dissemination of Condition Flags

DDR represents that, with respect to flags that are applied to publicly disseminated reports to help prevent a distorted view of the market, DDR has established the following flags that indicate that additional information is needed to understand the publicly disseminated price: Inter-affiliate, Nonstandard flag, Off market flag, Pricing context, and Compressed trade.[85] DDR also states that further information regarding the flags is available in its matrices under the narrative column.[86]

I. Calculation and Maintenance of Positions

DDR's SDR service would allow DDR to calculate open positions for persons with open SBS for which DDR maintains records. DDR's policies and procedures relating to its calculation of positions are provided in Exhibit DD.

J. Assignment of Unique Identification Codes

DDR's policies and procedures state that pursuant to Commission regulation (*e.g.*, Regulation SBSR), all registered SDRs must have a systemic means of identifying and tracking all products and persons involved in a SBS transaction, and that Commission regulation (*e.g.*, Regulation SBSR) has prescribed 10 identifiers where a UIC shall be used.[87] Further, DDR represents that it requires all Users to obtain a valid LEI where it exists, from an internationally recognized standards-setting system ("IRSS") that is recognized by the Commission, and that, where LEIs are populated, DDR performs a digit check on the LEI.[88]

DDR has proposed that its Users will be required to provide Legal Entity Identifiers for the following fields: Platform ID, ultimate parent ID, counterparty ID, broker ID, and execution agent ID.[89] For other UICs (transaction ID, branch ID, trading desk ID, trader ID, and product ID) as discussed further below, DDR has further proposed that each User will be required to create the identifiers in prescribed formats, and that it shall be each User's responsibility to maintain such identifiers (including, but not limited to, any internal mapping of static data) and to ensure their continued accuracy.[90]

K. Transaction ID Methodology

DDR represents that it accepts transaction IDs in the UTI field.[91] To validate the uniqueness of each transaction ID, DDR would apply a methodology, which it refers to as "Locks," that prevents the transaction ID from being used for another trade in the same or another jurisdiction.[92] However, DDR also represents that it is the responsibility of the reporting party User to create and provide the transaction ID on each transaction.[93]

K. Ultimate Parent and Affiliate Information

DDR represents that it captures the UIC for ultimate parent ID in DDR's system at the time a User on–boards to DDR as this is static information that does not vary by trade. DDR requires that each User provide the LEI of the ultimate parent for each account that is registered with DDR, with the exception of (1) natural persons who are not required to provide an LEI for ultimate parent and (2) asset managers and the funds they manage (for asset managers, if the ultimate parent LEI of the fund is unavailable, DDR will accept the LEI for the fund).[94]

M. Branch, Trading Desk, and Trader ID

DDR represents that each User is required to create, among other identifiers, the branch ID, trading desk ID, and trader ID. With respect to branch ID, DDR represents that it requires the User to provide the two digit ISO alpha country code and the two digit subdivision (city) code where the branch or other unincorporated office is located. DDR represents that if the User has more than one branch in the same subdivision (city), the branch ID will also include a single digit following the country and city code referencing the specific branch, such as 1 or 2, for example.[95] DDR represents that it requires that Users populate the trading desk ID and trader ID fields using an alphanumeric code with ten characters or less.[96]

N. Product ID

DDR represents that each User is required to create the product ID. DDR represents that the product ID for all asset classes will be the ISDA taxonomy.[97]

O. Missing UIC Information

Rule 906(a) of Regulation SBSR requires a registered SDR to identify any SBS reported to it for which the registered SDR does not have the counterparty ID and (if applicable) the broker ID, branch ID, execution agent ID, trading desk ID, and trader ID of each direct counterparty. Once a day, the registered SDR must send a report to each participant of the registered SDR (or, if applicable, an execution agent) identifying, for each SBS to which that participant is a counterparty, the SBS(s) for which the registered SDR lacks the counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, trading desk ID, or trader ID.

DDR's policies and procedures provide that to assist each User in identifying and supplying missing UIC information, the User's position report, which shall be made available each day to all Users, can be used to identify each SBS transaction for which DDR lacks any of the required UICs.[98] DDR further represents that it will utilize a procedure similar to its process for contacting non–Users to confirm transactions to attempt to obtain missing UIC information.[99]

P. Public Dissemination

According to DDR, its public price dissemination ("PPD") solution provides Users with a way to report prices publicly pursuant to the

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[82] *See id.*

[83] *See id.*

[84] *See id.*

[85] *See* Exhibit GG.1.

[86] *See id.*; *see also* Exhibits GG.2, GG.4, and GG.6, which are the matrices that enumerate the required fields and acceptable values for the submission of trade information into the DDR system.

[87] *See* Exhibit GG.3; *see also* Exhibit HH.2, Section 4.1.

[88] *See* Exhibit GG.3. DDR also notes that the Commission has recognized the global Legal Entity Identifier ("LEI") as an internationally recognized standards-setting system ("IRSS").

[89] *See id.* For counterparty IDs for entities that do not have an LEI (such as a natural person), DDR has proposed alternative methods for providing a counterparty ID.

[90] *See id.*

[91] *See* Exhibit GG.3.

[92] *See id.*

[93] *See id.*

[94] *See id.*; *see also* Exhibit HH.2.

[95] *See* Exhibit GG.3.

[96] *See id.*

[97] *See id.*

[98] *See* Exhibit HH.2, Section 4.2.3.3.

[99] *See id.*

Commission regulations for SBS (*e.g.*, Regulation SBSR). DDR's policies and procedures state that reporting sides are provided with a specific message (the "PPD Message"), with which to provide information required to be disseminated. The PPD Message is available for dissemination if the fields "Reporting Obligation Party 1" or "Reporting Obligation Party 2" are populated with "SEC" and the message passes validations.[100] According to DDR, the PPD platform will perform validations on every PPD Message submitted, and based on the result of that validation, it will issue a response to the relevant parties indicating a positive or negative validation result (*i.e.*, the "ACK" or "NACK" messages discussed in Section III.E).

DDR's policies and procedures state that DDR requires a separate message for public dissemination and for updating the position record.[101] DDR's policies and procedures also state that DDR requires that PPD Messages be sent at the same time as position messages (*i.e.*, Primary Economic Terms ("PET"), Confirmation, and/or Snapshot messages).[102] Further, DDR's policies and procedures provide that DDR does not determine whether a PPD Message should be disseminated publicly, and that any such PPD Message received is disseminated publicly if it passes validations and is directed to the Commission, as discussed above.[103] Further, DDR states that it requires that the reporting party User provide only PPD Messages that are required to be disseminated under the regulations.[104]

DDR represents that the PPD will receive messages with the following potential entries in the "Action" field for a UTI: New, Modify, and Cancel.[105] A New message will be the first report for a trade event submission, and only one UTI with an action of New will be allowed.[106] A Modify message will be a valid modification or correction to an existing trade event that has previously been reported by a submitting party, and the Modify action will be displayed to the public as a Cancel of the original submission and a Correction representing the Modify submission.[107] A cancel message will instruct the PPD Platform to cancel the last submission on a particular UTI, and, if the previous submission has been disseminated, the PPD Platform will disseminate the cancel with the original dissemination ID link.[108]

Q. Safeguarding Data, Operational Reliability, and Emergency Authority

DDR represents that the DDR system is supported by DTCC and relies on the disaster recovery program maintained by DTCC.[109] DDR's policies and procedures provide the key principles below for business continuity and disaster recovery that DDR follows to enable DDR to provide timely resumption of critical services should there be any disruption to DDR business: (i) Achieve recovery of critical services within a four-hour window with faster recovery time in less extreme situations; (ii) disperse staff across geographically diverse operating facilities; (iii) operate multiple back-up data centers linked by a highly resilient network technology; (iv) maintain emergency command and out-of-region operating control; (v) utilize new technology which provides high-volume, high-speed, asynchronous data transfer over distances of 1,000 miles or more; (vi) maintain processes that mitigate marketplace, operational and cyber-attack risks; (vii) test continuity plan readiness and connectivity on a regular basis, ensuring that Users and third-party vendors/service providers can connect to DDR's primary and back-up sites; (viii) communicate on an emergency basis with the market, Users, and government agency decision-makers; and (ix) evaluate, test, and utilize best business continuity and resiliency practices.[110]

DDR represents that it retains the right to exercise emergency authority in the event of circumstances determined by DDR to require such response or upon request by the designated regulators as applicable, and that any exercise of DDR's emergency authority shall be adequate to address the nature and scope of any such emergency.[111] DDR further represents that its CEO shall have the authority to exercise emergency authority, and that in his/her absence, any other officer of DDR shall have such authority.[112] DDR has stated that circumstances requiring the invocation of emergency authority include, but are not limited to, occurrences or circumstances: (a) Determined by DDR to constitute an emergency; (b) which threaten the proper functioning of the DDR system and the SDR services; or (c) which materially and adversely affect the performance of the DDR system and the SDR services.[113] DDR states that emergencies include, but are not limited to, natural, man-made and information technology emergencies.[114]

Pursuant to its policies and procedures, DDR shall notify the designated regulators, as soon as reasonably practicable, of an invocation of emergency authority or a material system outage is detected by DDR.[115] Such notification shall be provided in accordance with applicable regulations and will include the reasons for taking such emergency action, how potential conflicts of interest were minimized and documentation of the decision-making process.[116] Documentation underlying the emergency shall be made available to the designated regulators upon request.[117] DDR also represents that it shall issue an "Important Notice" as to all Users as soon as reasonably practicable in the event such emergency authority is exercised.[118]

DDR represents that it shall avoid conflicts of interest in decision-making with respect to emergency authority taken.[119] If a potential conflict of interest arises, the CCO shall be notified and consulted for the purpose of resolving the potential conflict.[120]

DDR represents that any emergency actions taken by DDR may be terminated by the CEO and in his/her absence, any other officer of DDR, and that any such termination of an emergency action will be followed by the issuance of an Important Notice as soon as reasonably practicable.[121]

R. Data Confidentiality; Sensitive Information and Security

DDR represents that DTCC has established a Technology Risk Management Team, whose role is to manage information security risk and ensure the availability, integrity, and confidentiality of the organization's information assets, but that DDR will be responsible for monitoring the performance of DTCC with regard to implementation and maintenance of information security within its infrastructure.[122] DDR further represents that various policies have been developed to provide the framework for both physical and information security and are routinely refreshed. The Technology Risk Management Team carries out a series of processes to endeavor to ensure DDR is protected in a cost-effective and comprehensive manner. This includes preventative controls such as firewalls, appropriate encryption technology, and authentication methods. Vulnerability scanning is used to identify high risks to be mitigated and managed and to measure conformance against the policies and standards.[123]

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[100] *See* Exhibit GG.3.

[101] *See* Exhibit GG.3.

[102] *See id.* DDR's User Guide (Exhibit GG.3) also provides descriptions of each of these types of messages. For example, a PET message is used to report the full details of the economic terms for trade and lifecycle events prior to confirmation.

[103] *See id.* and Exhibit HH.2, Section 5.1.2.

[104] *See id.*

[105] *See* Exhibit GG.3.

[106] *See id.*

[107] *See id.*

[108] *See id.* The dissemination ID is a DDR-generated identifier used to uniquely identify a message without exposing the UTI and will be used to manage cancellations and corrections.

[109] *See* Exhibit HH.2, Section 8.1.

[110] *See id.*

[111] *See* Exhibit HH.2, Section 7.3.

[112] *See id.*

[113] *See id.*

[114] *See id.*

[115] *See* Exhibit HH.2, Section 7.3.

[116] *See id.*

[117] *See id.*

[118] *See id.* An "Important Notice" is a formal notice sent to Users describing significant changes to DDR Rules, DDR Systems or other processes. *See id.*, Section 12.

[119] *See* Exhibit HH.2, Section 7.3.

[120] *See id.*

[121] *See id.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning DDR's Form SDR, including whether DDR has satisfied the requirements for registration as an SDR. To the extent possible, commenters are requested to provide empirical data and other factual support for their views. In addition, the Commission seeks comment on the following issues:

1. Please provide your views as to whether DDR's application for registration as an SDR demonstrates that DDR is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as an SDR, comply with any applicable provisions of the securities laws and the rules and regulations thereunder, and carry out its functions in a manner consistent with the purposes of Section 13(n) of the Exchange Act and Commission's SDR rules.

2. Exchange Act Rule 13n–5(b)(1)(iii) requires every SDR to establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SDR is complete and accurate. Please provide your views as to whether DDR's policies and procedures concerning verification of trade data are sufficiently detailed and reasonably designed to satisfy DDR that the transaction data that has been submitted to DDR is complete and accurate, as required by Exchange Act Rule 13n–5(b)(1)(iii).

3. Please provide your views as to whether DDR's policies and procedures to address confirmation of data accuracy and completeness for bespoke, bilateral SBS transactions (*i.e.*, DDR will attempt to contact a non-User counterparty to verify the accuracy of a trade if DDR has been provided with the non-User counterparty's LEI and can access email contact information for the non-User counterparty in the static data maintained by the DTCC trade repositories about their Users) are appropriate and reasonably designed to meet its obligations under Exchange Act Rule 13n–5(b)(1)(iii).

4. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed to ensure that the transaction data and positions that it maintains are complete and accurate, as required by Exchange Act Rule 13n–5(b)(3).

5. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed to ensure that it has the ability to protect the privacy of SBS transaction information that it receives, as required by Exchange Act Rule 13n–9.

6. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed to ensure that it has the ability to calculate positions, as required by Exchange Act Rule 13n–5(b)(2).

7. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed to provide a mechanism for Users and their counterparties to effectively resolve disputes over the accuracy of SBS data that DDR would maintain, as required by Exchange Act Rule 13n–5(b)(6). Are DDR's policies and procedures, including with respect to the specified timeframe, relating to dispute resolution adequate? Why or why not?

8. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed to ensure that its systems that support or are integrally related to the performance of its activities provides adequate levels of capacity, integrity, resiliency, availability, and security, as required by Exchange Act Rule 13n–6.

9. Please provide your views as to whether DDR's policies and procedures are sufficiently detailed and reasonably designed for the CCO's handling, management response, remediation, retesting, and closing of noncompliance issues, as required by Exchange Act Rule 13n–11(c)(7).

10. Please provide your views as to whether DDR's policies or procedures could result in an unreasonable restraint of trade or impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

11. Please provide your views as to whether DDR's proposed dues, fees, or other charges, discounts or rebates and the process for setting dues, fees, or other charges, discounts or rebates are fair and reasonable and not unreasonably discriminatory. Please address whether such proposed dues, fees, other charges, discounts, or rebates are applied consistently across all similarly situated users of DDR's services, including, but not limited to, Users, market infrastructures (including central counterparties), venues from which data can be submitted to DDR (including exchanges, SBS execution facilities, electronic trading venues, and matching and confirmation platforms), and third party service providers.

12. Exchange Act Rule 13n–4(c)(2)(i)–(iii) provides that each SDR (i) shall establish governance arrangements that are well defined and include a clear organizational structure with effective internal controls; (ii) must establish governance arrangements that provide for fair representation of market participants; and (iii) must provide representatives of market participants, including end-users, with the opportunity to participate in the process for nominating directors and with the right to petition for alternative candidates. Please provide your views as to whether DDR's governance arrangements are appropriate in light of the requirements of Rule 13n–4(c)(2)(i)–(iii).

13. Exchange Act Rule 13n–4(c)(3)(i)–(ii) provides that each SDR must establish, maintain, and enforce written policies and procedures reasonably designed to identify and mitigate potential and existing conflicts of interest in the SDR's decision-making process on an ongoing basis, and, with respect to the decision-making process for resolving any conflicts of interest, each SDR shall require the recusal of any person involved in such conflict from such decision-making. Please provide your views as to whether DDR's policies and procedures are appropriate in light of the requirements of Exchange Act Rule Exchange Act Rule 13n–4(c)(3)(i)–(ii).

14. Rule 903(a) of Regulation SBSR provides, in relevant part, that if no system has been recognized by the Commission, or a recognized system has not assigned a UIC to a particular person, unit of a person, or product, the registered SDR shall assign a UIC to that person, unit of person, or product using its own methodology. Is the methodology that DDR proposes to use with respect to UICs as described in its application materials appropriate in light of the requirements under Rule

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[122] *See* Exhibit HH.2, Section 9.1.

[123] *See* Exhibit HH.2, Section 9.

903(a) of Regulation SBSR? Why or why not?

15. Rule 907(c) of Regulation SBSR requires a registered SDR to make its Regulation SBSR policies and procedures publicly available on its Web site. The Commission has stated that this public availability requirement will allow all interested parties to understand how the registered SDR is utilizing the flexibility it has in operating the transaction reporting and dissemination system, and will provide an opportunity for market participants to make suggestions to the registered SDR for altering and improving those policies and procedures, in light of the new products or circumstances, consistent with the principles set out in Regulation SBSR.[124] DDR has proposed to satisfy its obligation under Rule 907(c) of Regulation SBSR by making the policies and procedures contained in Exhibit GG (including GG.1 through GG.6) and Exhibit HH.2, and the other application exhibits referenced therein available on its public Web site. Is the information that is included in or referenced in GG (including GG.1 through GG.6) and Exhibit HH.2 appropriate in light of the requirements of Rule 907(c)?

16. Regulation SBSR imposes duties on various market participants to report SBS transaction information to a registered SDR. Please provide your views as to whether the DDR application and the associated policies and procedures (including technical specifications for submission of data) provide sufficient information to potential participants of DDR about how they would discharge these regulatory duties when reporting to DDR. In particular, please provide your views as to whether DDR's technical specifications for submission of data are sufficiently detailed, especially with regard to historical SBSs (including pre-enactment and transitional SBS) and bespoke SBS. Please describe in detail what additional information you believe is necessary to allow you to satisfy any reporting obligation you may incur under Regulation SBSR.

17. Rule 906(a) of Regulation SBSR provides, in relevant part, that a participant of a registered SDR must provide the missing information with respect to its side of each SBS referenced in the report to the registered SDR within 24 hours. DDR represents that in order to be granted access to the DDR system, receive trade information, confirm or verify transactions, submit messages, or receive reports, a market participant must be on-boarded as a DDR User. Please provide your views as to whether this form of access afforded to the non-reporting-side is fair, open, and not unreasonably discriminatory.

18. Please provide your views as to whether DDR's policies and procedures relating to Rule 906(a) are sufficiently detailed, appropriate and reasonably designed to ensure data accuracy and completeness, including with respect to the requirement that once a day, a registered SDR shall send a report to each participant identifying, for each SBS to which that participant is a counterparty, the SBS for which the registered SDR lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, desk ID, and trader ID.

19. Please provide your views as to whether DDR's policies and procedures relating to Rule 905(b) are sufficiently detailed, appropriate and reasonably designed to ensure data accuracy and completeness.

20. Please provide your views as to whether DDR has provided sufficient information to explain the SBS transaction information that it would publicly disseminate to discharge its duties under Rule 902 of Regulation SBSR. Please describe any additional information that you feel is necessary. Please offer any suggestions generally for how the publicly disseminated information could be made more useful.

21. Please provide your views as to whether DDR has provided sufficient information to explain how Users would be required to report life cycle events under Rule 901(e). Please describe any additional information that you feel is necessary. In particular, please indicate whether you believe DDR's specifications are reasonably designed to identify the specific data element(s) that change and thus that trigger the report of the life cycle event.

22. Please provide your views as to whether DDR has provided sufficient information about how an agent could report SBS transaction information to DDR on behalf of a principal (*i.e.*, a person who has a duty under Regulation SBSR to report). Please describe any additional information that is necessary. In particular, please provide your views as to whether DDR should differentiate between agents who are Users of DDR because they themselves at times are principals (*i.e.*, they are counterparties to one or more SBSs that are reported to DDR on a mandatory basis) and agents who are never principals (*e.g.*, a vendor).

23. Please provide your views as to whether DDR's policies and procedures for the use of condition flags for transactions having special characteristics under Rule 907(a)(4) of Regulation SBSR are consistent with the goal of preventing market participants without knowledge of these characteristics receiving a distorted view of the market. Are there additional condition flags that you believe DDR should utilize? If so, please describe them and why you believe they are appropriate.

24. Exchange Act Rule 13n–10 requires that, before accepting any SBS data from a market participant or upon a market participant's request, an SDR shall furnish to the market participant a disclosure document that contains certain written information, which must reasonably enable the market participant to identify and evaluate accurately the risks and costs associated with using the SDR's services. This written information includes the SDR's criteria for providing others with access to its services and data it maintains, its criteria for those seeking to connect to or link with it, its description of its policies and procedures regarding its noncommercial and/or commercial use of the SBS transaction information that it receives from a participant, any registered entity, or any other person, its description of all the SDR's services, including any ancillary services, and its description of its governance arrangements. Based on the materials provided in DDR's Form SDR application, please provide your views as to whether the disclosures provided by the application are sufficiently detailed to meet the objectives of Exchange Act Rule 13n–10.

25. In addition to serving as an SDR for the credit and equity derivatives asset classes, DDR has applied to serve as an SDR for what it describes as SBS transactions in the interest rates derivatives asset class. Please provide your views about DDR's description of this asset class. Please also provide your views as to whether DDR has provided sufficient information about how a User reports SBS transaction information in this asset class. Is this information provided sufficient? Why or why not? Please describe any additional information that you believe should be provided.

26. Exchange Act Rule 13n–4(b)(5) requires that an SDR shall provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity). Based on the materials provided in DDR's Form SDR application, please provide your views as to whether DDR's policies and procedures are sufficient to meet the

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[124] *See* Regulation SBSR Adopting Release, 80 FR at 14648.

objectives of Exchange Act Rule 13n–4(b)(5).

27. Rule 901(i) of Regulation SBSR provides that a person must report information about a pre-enactment SBS or transitional SBS "to the extent that information about such transaction is available." Is it clear that DDR's policies and procedures, including regarding validations, will allow parties to submit transaction records for pre-enactment SBS and transitional SBS with data elements missing, pursuant to Rule 901(i)?

28. Please provide your views as to whether DDR's policies and procedures relating to how it would conduct validations of transaction records for historic and newly executed SBS are sufficiently detailed to meet the objectives of Exchange Act Rule 13n–5(b)(1)(iii), and what further clarifications, if any, you believe would be appropriate.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SBSDR–2016–02 on the subject line.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SBSDR–2016–02.

To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*).

Copies of the Form SDR, all subsequent amendments, all written statements with respect to the Form SDR that are filed with the Commission, and all written communications relating to the Form SDR between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SBSDR–2016–02 and should be submitted on or before August 8, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–16112 Filed 7–6–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78206; File No. SR–FICC–2016–002]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Suspend the Interbank Service of the GCF Repo® Service

June 30, 2016.

On May 5, 2016, the Fixed Income Clearing Corporation ("FICC" or the "Corporation") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–FICC–2016–002 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on May 20, 2016.[3] The Commission received no comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposed Rule Change

FICC seeks the Commission's approval to suspend the interbank service of the GCF Repo® service, as described more fully below. The suspension does not require changes to the text of the Government Securities Division ("GSD") Rulebook (the "GSD Rules"), however, the suspension requires changes to FICC's Real-Time Trade Matching ("RTTM®") system.

A. The GCF Repo Service

The GCF Repo service allows dealer members of FICC's Government Services Division to trade general collateral finance repos ("GCF Repos")[4] throughout the day without requiring intraday, trade-for-trade settlement on a delivery-versus-payment basis.[5] The service allows dealers to trade GCF Repos, based on rate and term, with inter-dealer broker netting members on a blind basis. Standardized, generic CUSIP numbers have been established exclusively for GCF Repo processing, and are used to specify the type of underlying security that is eligible to serve as collateral for GCF Repos. Only Fedwire eligible, book-entry securities may serve as collateral for GCF Repos. Acceptable collateral for GCF Repos include most U.S. Treasury securities, non-mortgage-backed federal agency securities, fixed and adjustable rate mortgage-backed securities, Treasury Inflation-Protected Securities and separate trading of registered interest and principal securities.[6]

The GCF Repo service has operated on both an "interbank" and "intrabank" basis. "Interbank" means that the two GCF Repo Participants which have been matched in a GCF Repo transaction each clear at a different clearing bank. "Intrabank" means that the two GCF Repo Participants which have been matched in a GCF Repo transaction clear at the same clearing bank.

B. Suspension of the Interbank Service of the GCF Repo Service

Since 2011, FICC has made several changes to its GCF Repo service in order to comply with recommendations made by the Tri-Party Repo Infrastructure Reform Task Force ("TPR"), an industry group formed and sponsored by the Federal Reserve Bank of New York. The main purpose of the TPR was to develop recommendations to address the risk presented by triparty repo transactions due to the morning reversal (commonly referred to as the "unwind") process, by replacing it with a process by which transactions are collateralized all day. The GCF Repo service was originally designed to have transactions "unwind" every morning in order to mirror the transactions in the triparty repo market. Prior to Triparty Reform, transactions submitted on "Day 1" unwound on the morning of "Day 2." To "unwind" means that the securities are returned to the lender of securities in the transaction and the cash is returned to the borrower of securities. Because of certain changes to the way in which the Triparty Reform effort was to proceed and the impact of such changes on the interbank service of the GCF Repo service as further described below, FICC seeks to suspend the interbank service of the GCF Repo service. FICC's proposal seeks no changes to the intrabank service.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–77840 (May 16, 2016), 81 FR 31996 (May 20, 2016) (SR–FICC–2016–002).

[4] A GCF Repo is one in which the lender of funds is willing to accept any of a class of U.S. Treasuries, U.S. government agency securities, and certain mortgage-backed securities as collateral for the repurchase obligation. This is in contrast to a specific collateral repo.

[5] Delivery-versus-payment is a settlement procedure in which the buyer's cash payment for the securities it has purchased is due at the time the securities are delivered.

[6] *See* Securities Exchange Act Release No. 34–58696 (September 30, 2008), 73 FR 58698, 58699 (October 7, 2008) (SR–FICC–2008–04).

All collateral that is settled via the interbank service is unwound the next morning to FICC's account at the pledging Clearing Bank in order to make the collateral available for collateral substitutions. In order to facilitate this intraday collateral substitution process, the Clearing Banks currently extend credit each business day to FICC at no charge. This uncapped and uncommitted credit extension to FICC facilitates the GCF Repo settlement process for both the intra-day and end of day settlement. The final changes related to the Triparty Reform effort would have eliminated the need for uncapped and uncommitted credit (a TPR goal) by including the development of interactive messages for the collateral substitution process (this was referred to as the "Sub Hub"), which would have eliminated the need for the current morning unwind of interbank GCF Repos, and would have allowed for substitution of collateral across the Clearing Banks with minimal intra-day credit required. The last change was also going to include a streamlined end of day GCF Repo settlement process to reduce the amount of cash and collateral needed in order to complete settlement. This change would have incorporated the concept of a "cap" on FICC credit from the Clearing Banks, and an automated solution would have been developed to process the interbank GCF Repo settlement without breaching the defined and agreed to caps. As a result, the amount of credit that FICC would have needed from the Clearing Banks would have been managed to a minimal amount.

Plans to implement the Sub Hub have not come to fruition. Therefore, to continue providing the interbank service, FICC would need a capped line of credit (without the benefits of any re-design to manage the amounts of needed credit). In other words, the capped line of credit would be applied to the interbank service as the service currently operates, and not in the re-designed fashion that was contemplated by the Triparty Reform effort, which would have allowed for smaller settlement amounts. FICC states that there would be prohibitive operational constraints in attempting to trade and settle GCF Repos while attempting to implement a cap on interbank GCF Repo trading and settlement. Specifically, FICC states that inter-dealer brokers would need to be integrated as a group from a technological perspective in order to be able to track the GCF Repo Participants' real-time netted positions, from an intrabank and interbank perspective, to ensure that the cap is not breached. FICC states that this would require an integrated pre-trade check across each inter-dealer broker's platform and FICC to ensure conformity to the cap, which is not feasible.

FICC seeks to suspend the interbank service of the GCF Repo service because: (1) FICC cannot operate the current interbank service within a capped credit amount; and (2) it is not feasible to institute a pre-trade validation system. FICC seeks to suspend the interbank service of the GCF Repo service after July 15, 2016 (the "Suspension Date"), which is approximately six (6) weeks prior to the date that one of the Clearing Banks has stated it will begin to impose the capped line of credit (September 1, 2016 or the "Capped Charges Date"). According to FICC's proposal, subsequent to the Suspension Date, inter-dealer brokers would only be permitted to execute transactions among GCF Repo Participants within the same Clearing Bank. Inter-dealer brokers would establish two markets for GCF Repo trading—one for each Clearing Bank. This is the same approach that FICC utilized when it previously suspended the interbank service between 2003 and 2008. In addition, GSD would only accept and process transactions among GCF Repo Participants that settle within the same Clearing Bank. As a result, the RTTM® system would not accept and process transactions among GCF Repo Participants who settle at different Clearing Banks. FICC states that it will continue to explore whether there are other ways to re-introduce the interbank service in the future.

II. Discussion

Section 19(b)(2)(C) of the Act[7] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[8] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with section 17A of the Act[9] and the rules thereunder applicable to FICC.

As described above, Triparty Reform efforts have sought to eliminate the need for Clearing Banks to provide FICC with uncapped and uncommitted credit within the settlement process. Specifically, the Sub Hub project described above, if approved and implemented, would have eliminated the need for the current morning unwind of interbank GCF Repos, and would have allowed for substitution of collateral across the Clearing Banks with minimal intra-day credit required. A streamlined end of day GCF Repo settlement process would have reduced the amount of cash and collateral needed in order to complete settlement, in which circumstances, there would have been a cap on the line of credit from the Clearing Banks to FICC, with an automated solution to process the interbank GCF Repo settlement within the cap. As a result, the amount of credit that FICC would have needed from the Clearing Banks would have been managed to a minimal amount.

However, in the Sub Hub's absence, according to FICC, a capped line of credit without the benefits of any re-design to manage the amounts of needed credit would present prohibitive operational constraints in attempting to trade and settle GCF Repos on an interbank basis. Specifically, inter-dealer brokers would need to be integrated as a group from a technological perspective in order to be able to track the GCF Repo Participants' real-time netted positions to ensure that the cap is not breached. This would require an integrated pre-trade check across each inter-dealer broker's platform and FICC to ensure conformity to the cap, which, FICC states, is not feasible. Accordingly, suspension of the interbank service will enable FICC to avoid accepting GCF Repo trades for clearing in an amount exceeding a Clearing Bank's capped line of credit, while allowing FICC to continue to clear GCF Repo transactions on an intrabank basis, thereby promoting the prompt and accurate clearance and settlement of securities transactions, consistent with section 17A(b)(3)(F) of the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly those set forth in section 17A,[10] and the rules and regulations thereunder.

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[7] 15 U.S.C. 78s(b)(2)(C).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78q–1.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–FICC–2016–002) be, and hereby is, *approved.*[12]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16033 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78222; File No. SR–MIAX–2016–18]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Options Fee Schedule

July 1, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule ("Fee Schedule").

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to clarify the circumstances that trigger the assessment of fees to, and billing of, Member or Non-Member users of the Exchange's System[3] for certain non-transactional fees, as set forth below. The Exchange is not proposing any new fees that are not currently charged; the Exchange is simply proposing to clarify that the Exchange will assess the fees only when the Member or Non-Member user is credentialed (as defined below) to use the System in the production environment, thus ensuring that Member and Non-Member users of the System are not billed unnecessarily before they are ready to begin using the System. The Exchange is also proposing several technical clarifying amendments to the Fee Schedule as described below.

New users of the System (and existing users of the System that seek to add connectivity) require testing and certification prior to actual use in the production environment. It has been the Exchange's experience that such users frequently must engage in internal business and technological decision-making and production processes that extend beyond the timing of their application, testing and certification with the Exchange for use of the System in the production environment. In order to ensure that Member and Non-Member users of the System are not assessed fees and billed unnecessarily during this time, the Exchange is proposing the below changes to the Fee Schedule relating to the timing of such assessment and billing.

The Exchange proposes to amend Section 3)a) of the Fee Schedule to provide that MIAX will assess a one-time Membership Application Fee on the earlier of (i) the date the applicant is certified in the membership system, or (ii) once an application for MIAX membership is finally denied.

The Exchange also proposes to amend Section 3)b) of the Fee Schedule to provide that Monthly Trading Permit Fees will be assessed with respect to Electronic Exchange Members ("EEMs")[4] (other than Clearing Firms) in any month the EEM is certified in the membership system and the EEM is authorized by the Exchange (hereinafter, "credentialed") to use one or more Financial Information Exchange ("FIX") Ports[5] in the production environment. Further, the Exchange proposes that Monthly Trading Permit Fees will be assessed with respect to EEM-Clearing Firms in any month the Clearing Firm is certified in the membership system to clear transactions on the Exchange. Finally, the Exchange proposes that Monthly Trading Permit Fees will be assessed with respect to Market Makers in any month the Market Maker is certified in the membership system, is credentialed to use one or more MIAX Express Interface ("MEI")[6] Ports in the production environment and is assigned to quote in one or more classes.[7]

The Exchange also proposes to amend Section 4)a) of the Fee Schedule to state that Application Programming Interface ("API") Testing and Certification Fees for EEMs (other than Clearing Firms) will be assessed (i) initially per API for FIX, FIX Drop Copy ("FXD")[8] and Clearing Trade Drop ("CTD")[9] in the month the EEM has been credentialed to use one or more ports in the production environment for the tested API,[10] and (ii) each time an EEM initiates a change to its system that requires testing and certification. The Exchange further proposes that API Testing and Certification Fees for EEM-Clearing Firms will be assessed (i) initially per API in the month the EEM-Clearing Firm has been credentialed to use one or more CTD ports in the production environment, and (ii) each time an EEM-Clearing Firm initiates a change to its system that requires testing and certification. The Exchange additionally proposes that API Testing and Certification Fees for Market Makers will be assessed (i) initially per API for CTD and MEI[11] in the month the Market Maker has been credentialed to use one or more ports in the production environment for the tested API and the Market Maker has been assigned to quote in one or more classes, and (ii) each time a Market Maker initiates a change to its system that requires testing and certification. Consistent with the current practice, such fees will not be assessed in situations where the Exchange initiates a change to its System requiring testing and certification by Members of the Exchange. The Exchange is proposing to clarify that the fees will not be assessed when the Exchange-initiated change is mandatory.

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[11] 15 U.S.C. 78s(b)(2).

[12] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "System" means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] The term "Electronic Exchange Member" means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed "members" under the Exchange Act. *See* Exchange Rule 100.

[5] A FIX Port is an interface with MIAX systems that enables the Port user (typically an Electronic Exchange Member or a Market Maker) to submit orders electronically to MIAX.

[6] MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit electronic quotes to MIAX.

[7] The calculation of the Trading Permit Fee for the first month in which the Trading Permit is issued will be pro-rated based on the number of trading days on which the Trading Permit was in effect divided by the total number of trading days in that month multiplied by the monthly rate.

[8] The FIX Drop Copy Port is a messaging interface that will provide a copy of real-time trade execution, trade correction and trade cancellation information to FIX Drop Copy Port users who subscribe to the service.

[9] CTD provides Exchange members with real-time clearing trade updates. The updates include the member's clearing trade messages on a low latency, real-time basis. The trade messages are routed to a member's connection containing certain information. The information includes, among other things, the following: (i) Trade date and time; (ii) symbol information; (iii) trade price/size information; (iv) member type (for example, and without limitation, Market Maker, Electronic Exchange Member, Broker-Dealer); and (v) Exchange Member Participant Identifier ("MPID") for each side of the transaction, including clearing member MPID.

The Exchange also proposes to amend Section 4)b) of the Fee Schedule to provide that API Testing and Certification Fees for Third Party Vendors, Service Bureaus and other non-Members will be assessed (i) initially per API for FIX, FXD, CTD and MEI in the month the Non-Member has been credentialed to use one or more ports in the production environment for the tested API, and (ii) each time a Third Party Vendor, Service Bureau, or other non-Member initiates a change to its system that requires testing and certification. The Exchange also proposes that such fees will not be assessed in situations where the Exchange initiates a mandatory change to its System requiring testing and certification by Non-Members of the Exchange.

The Exchange additionally proposes to amend Section 4)(c) of the Fee Schedule to provide that Member Network Connectivity Testing and Certification Fees will be assessed (i) initially per connection in the month the Individual Firm has been credentialed to use any API or Market Data feeds in the production environment utilizing the tested network connection, and (ii) each time an Individual Firm initiates a change to its system that requires network connectivity testing and certification. The Exchange also proposes that such fees will not be assessed in situations where the Exchange initiates a mandatory change to its System requiring testing and certification by Members of the Exchange.

The Exchange proposes to amend Section 4)d) of the Fee Schedule to provide that Non-Member Network Connectivity Testing and Certification Fees will be assessed (i) initially per connection in the month the Service Bureau, Extranet Provider or other Non-Member has been credentialed to use any API or Market Data feeds in the production environment using the tested network connection, and (ii) each time a Service Bureau, Extranet Provider or other non-Member initiates a change to its system that requires network connectivity testing and certification. The Exchange also proposes that such fees will not be assessed in situations where the Exchange initiates a mandatory change to its System requiring testing and certification by Members of the Exchange.

The Exchange proposes to amend Section 5)a) of the Fee Schedule to provide that Monthly Member Network Connectivity Fees for the applicable connectivity will be assessed in any month the Member is credentialed to use any of the MIAX APIs or Market Data feeds in the production environment and will be pro-rated when a Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Member has been credentialed to use any of the MIAX APIs or Market Data feeds in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

The Exchange proposes to amend Section 5)b) of the Fee Schedule to provide that Monthly Non-Member Network Connectivity Fees for the applicable connectivity will be assessed in each month the Non-Member has been credentialed to use any of the MIAX APIs or Market Data feeds in the production environment and will be pro-rated when a Non-Member makes a change to the connectivity (by adding or deleting connections) with such pro-rated fees based on the number of trading days that the Non-Member has been credentialed to use any of the MIAX APIs or Market Data feeds via the network connection in the production environment through such connection, divided by the total number of trading days in such month multiplied by the applicable monthly rate.

The Exchange proposes to amend Section 5)d)i) of the Fee Schedule to provide that MIAX will assess monthly FIX Port Fees on Members in each month the Member is credentialed to use a FIX Port in the production environment and based upon the number of credentialed FIX Ports.

The Exchange further proposes to amend Section 5)d)ii) of the Fee Schedule to provide that MIAX will assess monthly MEI Port Fees on Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class. The amount of the monthly MEI Port Fee will be based upon the number of classes in which the Market Maker was assigned to quote in any given day within the calendar month, and upon the class volume percentages set forth in the MEI Port Fee table in Section 5)d)ii). The class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter.

The Exchange also proposes to amend Section 5)d)iii) of the Fee Schedule to provide that CTD Port Fees will be assessed in any month the Member is credentialed to use the CTD Port in the production environment.

The Exchange also proposes to amend Section 5)d)iv) of the Fee Schedule to provide that FXD Port Fees will be assessed in any month the Member is credentialed to use the FXD Port in the production environment.

The Exchange proposes to amend Section 5)e) of the Fee Schedule to provide that MIAX Member Participant Identifier ("MPID") Fees will be assessed in each month the Member is credentialed to use such MPIDs in the production environment.

The Exchange additionally proposes to amend Section 6 of the Fee Schedule to provide that, with respect to each of the Exchange's data feeds including MIAX Top of Market ("ToM"), Administrative Information Subscriber ("AIS") and MIAX Order Feed ("MOR"), MIAX will assess Market Data Fees applicable to such data feed on Internal and External Distributors in each month the Distributor is credentialed to use such data feed in the production environment.

The purpose of the proposed rule change is to provide all users of the Exchange with greater transparency as to when non-transactional fees will be assessed to such users. The Exchange believes that defining the timing in the Fee Schedule will benefit all market participants by assisting them in the decision-making process for the timing of their readiness to use the Exchange's System. Moreover, establishing in the fee schedule the timing of certain non-transaction fees enhances transparency on the Exchange and lets all market participants know that they will not be assessed such fees until such time as they are credentialed to use and avail themselves of the Exchange's System.

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[10] FIX, FXD and CTD are types of APIs.

[11] MEI is a type of API.

The Exchange is also proposing minor technical amendments to the Fee Schedule throughout the Fee Schedule (*e.g.*, replacing the term "MM" with the term "Market Maker" and capitalizing the word "Member") to make consistent defined terms used throughout the Fee Schedule. These changes are intended for clarity and ease of reference.

The proposed rule change will become effective July 1, 2016.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Sections 6(b)(4) of the Act,[13] in that it is an equitable allocation of reasonable fees and other charges among Exchange Members and other persons using its facilities, and Section 6(b)(5) of the Act,[14] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change furthers the objectives of Section 6(b)(4) of the Act[15] because it will apply equally to all MIAX participants within the various categories set forth in the proposed rule change. The Exchange further believes that it is equitable and reasonable to amend the Fee Schedule to charge participants for these non-transaction fees only when they are credentialed to use the facilities of the Exchange, and not before that time.

The proposed rule change is consistent with Section 6(b)(5) of the Act,[16] in that it is designed to protect investors and the public interest and to promote just and equitable principles of trade by adding transparency to the Exchange's marketplace and by broadening the description of non-transactional fees to include the timing of assessment of such fees, and by ensuring that these fees will only be assessed on MIAX participants when they are credentialed to use the facilities of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would increase both intermarket and intramarket competition by defining the timing of non-transactional fee assessments for all users of the Exchange, thereby creating greater clarity around the Exchange's assessment of such fees for participants that wish to begin and continue using the Exchange's facilities, and enabling them to assess the competitive nature of the fees. This should benefit all market participants and improve competition on the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposal will enhance competition, because market participants will have more clarity surrounding when they will be assessed non-transactional fees and will also understand that they will not be assessed such fees until such time as they are ready to use the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)[18] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by July 1, 2016. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to clarify the circumstances that trigger the assessment of fees to, and billing of Member and Non-Member users of the Exchange's System so as to assess existing non-transactional fees only on Member and Non-Member users that are credentialed to use the System. The Commission notes that the Exchange is not proposing any new fees, but is clarifying that the Exchange will only assess certain non-transaction fees when the Member or non-Member user is credentialed to use the Exchange's system. Thus, the proposed rule change which will ensure that users will not be billed until they are ready to begin using the Exchange system. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved

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[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2016–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–18, and should be submitted on or before July 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Brent J. Fields,

Secretary.

[FR Doc. 2016–16122 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78204; File No. SR–NYSEArca–2016–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Shares of the Natixis Seeyond International Minimum Volatility ETF Under NYSE Arca Equities Rule 8.600

June 30, 2016.

On May 5, 2016, NYSE Arca, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Natixis Seeyond International Minimum Volatility ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on May 25, 2016.[3] On June 13, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded its entirety the proposed rule change as originally filed.[4] On June 22, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[5] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act[6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates August 23, 2016, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2016–67).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16031 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78201; File No. SR–ISE Gemini–2016–06]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

June 30, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2016, ISE Gemini, LLC (the "Exchange" or "ISE Gemini") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE Gemini proposes to amend its rules to extend a pilot program to quote and to trade certain options classes in penny increments ("Penny Pilot Program"). The text of the proposed rule change is available on the Exchange's Web site *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77861 (May 19, 2016), 81 FR 33291.

[4] In Amendment No. 1, the Exchange: (1) Narrows the universe of investments that may be held by the Fund; (2) offers color regarding types of corporate bonds of foreign issuers that the Fund would ordinarily hold; (3) clarifies potentially ambiguous language in the filing.

[5] In Amendment No. 2, the Exchange proposes standards for the corporate bonds of foreign issuers that may be held by the Fund, and clarifies how spot foreign currency transactions would be priced for purposes of calculating the net asset value of the Fund. Both amendments are available at: *http://www.sec.gov/comments/sr-nysearca-2016-67/nysearca201667.shtml.*

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock ("QQQQ"), the SPDR S&P 500 Exchange Traded Fund ("SPY") and the iShares Russell 2000 Index Fund ("IWM"), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2016.[3] The Exchange proposes to extend the Penny Pilot Program through December 31, 2016, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2016. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning December 1, 2015, and ending May 31, 2016). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

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[3] *See* Exchange Act Release No. 75315 (June 26, 2015), 80 FR 38243 (July 2, 2015) (SR–ISE Gemini–2015–12).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov*. Please include File No. SR–ISE Gemini–2016–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE Gemini–2016–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of ISE Gemini. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE Gemini–2016–06 and should be submitted by July 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16028 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 6a–3, SEC File No. 270–0015, OMB Control No. 3235–0021.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information provided for in Rule 6a–3 (17 CFR 240.6a–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Act").

Section 6 of the Act sets out a framework for the registration and regulation of national securities exchanges. Under Rule 6a–3, one of the rules that implements Section 6, a national securities exchange (or an exchange exempted from registration based on limited trading volume) must provide certain supplemental information to the Commission, including any material (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Rule 6a–3 also requires the exchanges to file monthly reports that set forth the volume and aggregate dollar amount of certain securities sold on the exchange each month. The information required to be filed with the Commission pursuant to Rule 6a–3 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The Commission estimates that each respondent makes approximately 12 such filings on an annual basis at an average cost of approximately $20 per response. Currently, 19 respondents (19 national securities exchanges) are subject to the collection of information requirements of Rule 6a–3. The Commission estimates that the total burden for all respondents is 114 hours and $4,560 per year.

Compliance with Rule 6a–3 is mandatory for registered and exempt exchanges. Information received in response to Rule 6a–3 shall not be kept confidential; the information collected is public information. As set forth in Rule 17a–1 (17 CFR 240.17a–1) under the Act, a national securities exchange is required to retain records of the collection of information for at least five years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16036 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32167; File No. 812–14502]

Lord Abbett Family of Funds and Lord, Abbett & Co. LLC; Notice of Application

June 29, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order pursuant to (a) section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

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[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SUMMARY: *Summary of the Application:* Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: Lord Abbett Affiliated Fund, Inc., Lord Abbett Bond-Debenture Fund, Inc., Lord Abbett Developing Growth Fund, Inc., Lord Abbett Equity Trust, Lord Abbett Global Fund, Inc., Lord Abbett Investment Trust, Lord Abbett Mid Cap Stock Fund, Inc., Lord Abbett Municipal Income Fund, Inc., Lord Abbett Research Fund, Inc., Lord Abbett Securities Trust, Lord Abbett Series Fund, Inc., and Lord Abbett U.S. Government & Government Sponsored Enterprises Money Market Fund, Inc. (collectively, the "Funds"), and Lord, Abbett & Co. LLC ("Lord Abbett").

DATES: *Filing Dates:* The application was filed on June 30, 2015, and amended on October 9, 2015, June 16, 2016 and June 22, 2016.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 25, 2016, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, c/o Brooke A. Fapohunda, Esq., Lord, Abbett & Co. LLC, 90 Hudson Street, Jersey City, NJ 07302.

FOR FURTHER INFORMATION CONTACT: Kaitlin C. Bottock, Senior Counsel, at (202) 551–8658 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Fund is organized as a Maryland corporation or Delaware statutory trust. Each Fund is registered under the Act as an open-end management investment company. Certain of the Funds consist of multiple series and all may offer additional series in the future (such series thereof, each also a "Fund"). Certain of the Funds either are, or may be, money market funds that comply with Rule 2a–7 under the Act (collectively, "Money Market Funds"). Lord Abbett is a Delaware limited liability company and serves as the investment adviser to the Funds.[1] Lord Abbett and every investment adviser to the Funds will be registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").

2. At any particular time, while some Funds are lending money to banks or other entities by entering into repurchase agreements, or purchasing other short-term instruments, other Funds may need to borrow money from the same or similar banks for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes. Certain Funds currently have a $500 million committed line of credit with State Street Bank & Trust Company ("Committed Credit Facility") for short-term temporary or emergency purposes, including the funding of shareholder redemptions and trade settlements.

3. When a Fund borrows money under the Committed Credit Facility, it would pay interest on the borrowed cash at a rate that would be higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants assert that this differential represents the profit earned by the lender on loans and is not attributable to any material difference in the credit quality or risk of such transactions.

4. The Funds seek to enter into master interfund lending agreements ("Interfund Lending Agreements") with each other that would permit each Fund to lend money directly to and borrow money directly from other Funds through an interfund facility ("Facility") for temporary purposes ("Interfund Loan"). The Money Market Funds typically will not participate as borrowers. It is anticipated that, in order to comply with Rule 2a–7 under the Act, the Money Market Funds will lend through the Facility only if the requisite determinations contemplated by that Rule have been made by Lord Abbett. Applicants state that the Facility would both reduce the Funds' potential borrowing costs and enhance the ability of the lending Funds to earn higher rates of interest on their short-term loans. Although the Facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with unaffiliated banks.

5. Applicants anticipate that the Facility would provide a borrowing Fund with significant savings at times when the cash position of the borrowing Fund is insufficient to meet temporary cash requirements. This situation could arise when shareholder redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to three days (or longer for certain transactions). However, redemption requests normally are effected immediately. The Facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also anticipate that a Fund could use the Facility when a sale of securities "fails," for example, due to a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the

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[1] Applicants request that the relief apply to any existing and future series of the Funds and any other registered open-end management investment company or its series that (i) is advised by Lord Abbett, any successor thereto or any investment adviser controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the Act) with Lord Abbett or any successor thereto (such entities included in the term "Lord Abbett"), and (ii) is part of the same "group of investment companies," as defined in Section 12(d)(1)(G)(ii) of the Act, as the Funds (each also included in the term "Fund"). The term "successor" is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization. All entities that currently intend to rely on the requested relief are named as applicants. Any other entity that subsequently relies on the order will comply with the terms and conditions set forth in the application.

transaction. "Sales fails" may present a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from securities sold. Alternatively, the Fund could: (i) "Fail" on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund; or (ii) sell a security on a same-day settlement basis, possibly earning a lower return on the investment. Use of the Facility under these circumstances would enable the Fund to have access to immediate short-term liquidity.

7. While bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, under the Facility, a borrowing Fund would pay lower interest rates than the rate that would be available to the Fund under short-term loans offered by banks. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants assert that the Facility would benefit both borrowing and lending Funds.

8. The interest rate to be charged to the Funds on any Interfund Loan (the "Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate," both as defined below. The Repo Rate for any day would be the highest rate available to a lending Fund from investment in overnight repurchase agreements with counterparties approved by the Fund or Lord Abbett. The Bank Loan Rate for any day would be calculated by the Interfund Lending Committee (as defined below) each day an Interfund Loan is made according to a formula established by each Fund's board of directors or trustees ("Fund Board" and each such director or trustee, a "Director") that is intended to approximate the lowest interest rate at which short-term bank loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.,* federal funds plus 100 basis points) or another appropriate rate reflective of short-term bank loan rates that could be available to the Funds and would vary with this rate so as to reflect changing bank loan rates. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund Board. In addition, each Fund Board periodically would review the continuing appropriateness of using the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds.

9. Certain members of Lord Abbett's Operations, Legal and Compliance Departments would administer the Facility ("Interfund Lending Committee"). No portfolio manager of any Fund will serve as a member of the Interfund Lending Committee. The Facility would be available to any Fund. On any day on which a Fund intends to borrow money, the Interfund Lending Committee would make an Interfund Loan from a lending Fund to a borrowing Fund only if the Interfund Loan Rate is: (i) More favorable to the lending Fund than the Repo Rate; and (ii) more favorable to the borrowing Fund than the Bank Loan Rate. Under the Facility, the portfolio manager(s) for each participating Fund could provide standing instructions to participate daily as a borrower or lender. The Interfund Lending Committee on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. The Interfund Lending Committee would allocate loans among borrowing Funds without any further communication from a Fund's portfolio manager(s). Applicants anticipate that there typically will be far more available uninvested cash each day than borrowing demand. Therefore, after the Interfund Lending Committee has allocated cash for Interfund Loans, the Interfund Lending Committee will invest any remaining cash in accordance with the standing instructions of the portfolio manager(s) or such remaining amounts will be invested directly by the Fund's portfolio manager(s).

10. The Interfund Lending Committee would allocate borrowing demand and cash available for lending among the Funds on what the Interfund Lending Committee believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each InterFund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund Board, including a majority of the Directors who are not "interested persons" of the Fund, as that term is defined in section 2(a)(19) of the Act ("Independent Fund Board Members"), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. The Interfund Lending Committee would: (i) Monitor the Interfund Loan Rate and the other terms and conditions of the loans; (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (iii) ensure equitable treatment of each Fund; and (iv) make quarterly reports to each Fund Board concerning any transactions by the Fund under the Facility and the Interfund Loan Rate charged.

12. Lord Abbett, through the Interfund Lending Committee, would administer the Facility as a disinterested fiduciary as part of its duties under the investment management contract with each Fund and as part of its duties under the administrative services agreement with the Funds, and would receive no additional fee as compensation for its services in connection with the administration of the Facility. No Fund will pay any additional fees in connection with the administration of the Facility (*i.e.,* the Funds will not pay standard pricing, record keeping, bookkeeping or accounting fees in connection with the Facility).

13. No Fund may participate in the Facility unless: (i) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (ii) the Fund has fully disclosed all material information concerning the Facility in its prospectus and/or statement of additional information ("SAI"); and (iii) the Fund's participation in the Facility is consistent with its investment objectives, investment limitations and organizational documents.

14. As part of each Fund Board's review of the continuing appropriateness of a Fund's participation in the Facility as required by condition 14, the Directors of the Fund, including a majority of the Independent Fund Board Members, also will review the process in place to assess: (i) If the Fund participates as a lender, any effect its participation may have on the Fund's liquidity; and (ii) if the Fund participates as a borrower, whether the Fund's portfolio liquidity is sufficient to satisfy its obligations under the Facility along with its other liquidity needs.

15. In connection with the Facility, applicants request an order pursuant to section 6(c) of the Act exempting them from the provisions of sections 18(f) and 21(b) of the Act; pursuant to section 12(d)(1)(J) of the Act exempting them from section 12(d)(1) of the Act;

pursuant to sections 6(c) and 17(b) of the Act exempting them from sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Act; and pursuant to section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from borrowing money or other property from the registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person, directly or indirectly, if that person controls or is under common control with that company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Section 2(a)(9) of the Act defines "control" as the "power to exercise a controlling influence over the management or policies of a company," but excludes circumstances in which "such power is solely the result of an official position with such company." Applicants state that the Funds may be under common control by virtue of having Lord Abbett as their common investment adviser and/or by having common officers, directors and/or trustees.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to grant an order exempting a proposed transaction from section 17(a) provided that: (i) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the transaction is consistent with the policy of the investment company as recited in its registration statement and reports filed under the Act; and (iii) the transaction is consistent with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants assert that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the Facility transactions do not raise these concerns because: (i) Lord Abbett, through the Interfund Lending Committee, would administer the program as a disinterested fiduciary as part of its duties under the investment management contract with each Fund and as part of its duties under the administrative services agreement with the Funds; (ii) all Interfund Loans would consist only of uninvested cash reserves that the lending Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (iii) the Interfund Loans would not involve a significantly greater risk than other such investments; (iv) the lending Fund would earn interest at a rate higher than it could otherwise obtain through such other investments; and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements. Moreover, applicants assert that the other terms and conditions that applicants propose also would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from selling securities or other property to the investment company. Section 17(a)(2) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from purchasing securities or other property from the investment company. Section 12(d)(1) of the Act generally prohibits any registered investment company from purchasing or otherwise acquiring any security issued by any other investment company except in accordance with the limitations set forth in that section.

5. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act. Applicants also state that a pledge of assets in connection with an Interfund Loan could be construed as a purchase of the borrowing Fund's securities or other property for purposes of section 17(a)(2) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below. Applicants also state that the requested relief from section 17(a)(2) of the Act meets the standards of section 6(c) and 17(b) because any collateral pledged to secure an Interfund Loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).

6. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investments. Applicants submit that the Facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or their shareholders, and that Lord Abbett will receive no additional compensation for its services in administering the Facility. Applicants also note that the purpose of the Facility is to provide economic benefits for all the participating Funds and their shareholders.

7. Section 18(f)(1) of the Act prohibits any open-end investment company from issuing any senior security except that any such company is permitted to borrow from any bank, provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" generally includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief under section 6(c) from section 18(f)(1) to the limited extent necessary to permit a Fund to borrow directly from other Funds.

8. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the Facility is consistent

with the purposes and policies of section 18(f)(1).

9. Section 17(d) of the Act and rule 17d-1 under the Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of such a person, when acting as principal, from effecting any transaction in which the investment company is a joint or joint and several participant, unless, upon application, the transaction has been approved by the Commission. Rule 17d-1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

10. Applicants assert that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to insiders. Applicants assert that the Facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and limitations. Applicants assert that each Fund's participation in the Facility would be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Interfund Lending Committee will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is: (i) More favorable to the lending Fund than the Repo Rate and (ii) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding bank borrowings, any Interfund Loans to the Fund: (i) Will be at an interest rate equal to or lower than the interest rate of any outstanding bank loan; (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (iii) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (iv) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the Facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the Facility only on a secured basis. A Fund may not borrow through the Facility or from any other source if its total outstanding borrowings immediately after such borrowing would be more than 33 1/3% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (i) Repay all its outstanding Interfund Loans; (ii) reduce its outstanding indebtedness to 10% or less of its total assets; or (iii) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may lend to another Fund through the Facility if the loan would cause its aggregate outstanding loans through the Facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the Facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions for the preceding seven calendar days or 102% of the Fund's sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the Facility must be consistent with its investment objectives, investment limitations, and organizational documents.

12. The Interfund Lending Committee will calculate total Fund borrowing and lending demand through the Facility, and allocate loans on an equitable basis among the Funds, without the intervention of a Fund's portfolio manager(s). The Interfund Lending Committee will not solicit cash for the Facility from any Fund or prospectively publish or disseminate loan demand data to any portfolio manager. The Interfund Lending Committee will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions of the portfolio manager(s) or such remaining amounts will be invested directly by the Fund's portfolio manager(s).

13. The Interfund Lending Committee will monitor the Interfund Loan Rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to each Fund Board concerning the participation of the Funds in the Facility and the terms and other conditions of any extensions of credit under the Facility.

14. Each Fund Board, including a majority of the Independent Fund Board Members, will:

(a) review, no less frequently than quarterly, the relevant Fund's participation in the Facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(c) review, no less frequently than annually, the continuing appropriateness of the relevant Fund's participation in the Facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, Lord Abbett promptly will refer such loan for arbitration to an independent arbitrator selected by each Fund Board involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to each Fund Board setting forth a description of the nature of any dispute and the actions taken by the Funds involved to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the Facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity, and the Interfund Loan Rate, the rate of interest available at the time the Interfund Loan is made on overnight repurchase agreements and bank borrowings, and such other information presented to the Fund Board in connection with the review required by conditions (13) and (14).

17. The Interfund Lending Committee will prepare and submit to each Fund Board for review an initial report describing the operations of the Facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of the Facility, the Interfund Lending Committee will provide quarterly reports on the operations of the Facility to each Fund Board. Each Fund's chief compliance officer, as defined in Rule 38a-1(a)(4) under the Act (a "Fund CCO"), shall prepare an annual report for its Fund Board for each year that the Fund participates in the Facility, which report evaluates the Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance. Additionally, each Fund CCO will also annually file a certification pursuant to Item 77Q3 of Form N–SAR, as such Form may be revised, amended, or superseded from time to time ("N–SAR"), for each year that the Fund participates in the Facility, that certifies that the Fund and Lord Abbett have established procedures reasonably designed to achieve compliance with the terms and conditions of the order. In particular, the certification will address procedures designed to achieve the following objectives:

(a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate;

(b) compliance with the collateral requirements as set forth in the application;

(c) compliance with the percentage limitations on interfund borrowing and lending;

(d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Fund Board; and

(e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third-party borrowings of a borrowing Fund at the time of the Interfund Loan.

Additionally, each Fund's independent registered public accountants, in connection with their audit examination of the Fund, will review the operation of the Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the Facility upon receipt of the requisite regulatory and shareholder approval unless it has fully disclosed in its prospectus and/or SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16038 Filed 7–6–16; 8:45 am]

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[2] If the dispute involves Funds with different Fund Boards, the respective Fund Boards will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78223; File No. SR–NASDAQ–2016–013]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Director's Members or Nominees

July 1, 2016.

I. Introduction

On March 15, 2016, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require listed companies to publicly disclose compensation or other payments by third parties to board of director's members or nominees for director. The proposed rule change was published for comment in the **Federal Register** on April 5, 2016.[3] On May 18, 2016, Nasdaq filed Amendment No. 1 to the proposal.[4] On May 20, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 30, 2016, Nasdaq withdrew Amendment No. 1 and filed Amendment No. 2 to the proposal, which replaced and superseded the original proposal in its entirety.[6] The Commission received eight comments on the proposal by seven commenters, as well as a response to the comment letters from Nasdaq regarding the proposal [7] This order grants approval of the proposed rule change, as amended by Amendment No. 2.

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[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77481 (Mar. 30, 2016), 81 FR 19678 ("Notice").

[4] *See* Letter to Brent J. Fields, Secretary, Commission, from David Strandberg, Associate Vice President, Nasdaq dated May 18, 2016.

[5] *See* Securities Exchange Act Release No. 77879 (May 20, 2016), 81 FR 33571 (May 26, 2016).

II. Description of the Proposed Rule Change as Modified by Amendment No. 2

Nasdaq is proposing to adopt Rule 5250(b)(3) to require each listed company to publicly disclose the material terms of all agreements or arrangements between any director or nominee for director on the company's board and any person or entity other than the company relating to compensation or other payment in connection with that person's candidacy or service as a director.[8] The proposal would require disclosure of all such agreements and arrangements by no later than the date on which the company files or furnishes a definitive proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10–K or Form 20–F).[9]

The proposal as modified by Amendment No. 2 would require a listed company to disclose this information either on or through the company' Web site or in the definitive proxy or information statement [10] for the next shareholders' meeting at which directors are elected (or, if the company does not file proxy or information statements, in its Form 10–K or Form 20–F). The proposed rule provides that a company would not need to make disclosure, however, of agreements and arrangements that: (i) Relate only to reimbursement of expenses in connection with candidacy as a director; (ii) existed prior to the nominee's candidacy (including as an employee of the other person or entity) and the nominees relationship with the third party has been publicly disclosed in a definitive proxy or information statement or annual report (such as in the director or nominee's biography); or (iii) have been disclosed under Item 5(b) of Schedule 14A of the Act or Item 5.02(d)(2) of Form 8–K in the current fiscal year.[11] Such disclosure, however, pursuant to these provisions under Schedule 14A and Form 8–K in (iii) would not relieve a company of its disclosure obligations under the proposed rule.[12]

The proposed rule states that a Company must make the disclosure required by the rule at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement.[13] The proposed rule further states that if a Company discovers an agreement or arrangement that should have been disclosed pursuant to the proposed rule but was not disclosed, then the Company must promptly make the required disclosure by filing a Form 8–K or 6–K, where required by Commission rules, or by issuing a press release.[14] However, such remedial disclosure, regardless of its timing, would not satisfy the annual disclosure requirements under the proposed rule.[15]

The proposal further provides that if a company undertakes reasonable efforts to identify all such agreements or arrangements, including asking each director or nominee in a manner designed to allow timely disclosure, and makes the required remedial disclosure promptly if it discovers an agreement or arrangement that should have been disclosed but was not, then the company will not be considered deficient with respect to the rule.[16]

The Exchange also proposes to make a change to Nasdaq Listing Rule 5615, which permits foreign private issuers to follow their home country practice in lieu of certain corporate governance requirements of the Exchange, provided that the issuer fulfills the conditions set forth in that rule. Under the proposal, the required disclosure of third-party payments to directors will be included among the rule provisions where a foreign private issuer would be permitted to follow home country practice.[17] To meet the conditions of Rule 5615, a foreign private issuer would be required to submit to Nasdaq a written statement from an independent counsel in its home country certifying that the company's practices are not prohibited by the home country's laws. The issuer would also be required to disclose in its annual filings with the Commission (or, in certain circumstances, on its Web site) that it does not follow the proposed rule's requirements and briefly state the home country practice it follows in lieu of these requirements.

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[6] *See* Letter to Brent J. Fields, Secretary, Commission, from David Strandberg, Associate Vice President, Nasdaq dated June 30, 2016. In Amendment No. 2, Nasdaq clarified, among other things, that: The required disclosure must be made no later than the date on which the relevant company files or furnishes a definitive proxy or information statement (or, if the company does not file proxy or information statements, no later than when the company files its next Form 10–K or Form 20–F); the proposed rule does not separately require the initial disclosure of newly entered into agreements or arrangements, provided that disclosure is made pursuant to the rule for the next shareholders' meeting at which directors are elected; a company must make the required disclosure at least annually; the disclosure requirement encompasses non-cash compensation and other forms of payment obligation, such as indemnification; all references in the proposed rule to proxy or information statements are to the definitive versions thereof; remedial disclosure (when a company newly discovers an agreement that should have been disclosed), regardless of its timing, would not satisfy the annual disclosure requirements; and a company that provides disclosure in the current fiscal year pursuant to the requirement in Item 5.02(d)(2) of Form 8–K would not have to make separate disclosure under the proposed rule, although disclosure under Commission rules would not relieve a company of its ongoing obligation under the proposed rule to make annual disclosure. The amendment also explicitly states that, if a company provides disclosure in a definitive proxy or information statement, including to satisfy the Commission's proxy disclosure requirements, sufficient to comply with the proposed rule, the company's obligation to satisfy the rule is fulfilled regardless of the reason for which such disclosure was made.

Amendment No. 2 also revised the proposal to explicitly permit the required disclosure to be made in an information statement in addition to other ways specified in the proposal; limit the required disclosure to the material terms of agreements or arrangements relating to compensation and payments in connection with a person's board service or candidacy; and permit Web site disclosure through a hyperlink to another Web site, provided that the other Web site is continuously accessible. Amendment No. 2 also added that a foreign private issuer would be permitted to follow home country practice in lieu of the proposal's requirements provided that it complies with the conditions set forth in Nasdaq Rule 5615. In addition, the amendment revised the effective date of the disclosure requirements to thirty days after Commission approval of the proposed rule and included a statement from Nasdaq that it would notify listed companies of the effective date.

[7] *See* Letters to Brent J. Fields, Secretary, Commission, from Andrew A. Schwartz, Associate Professor of Law, University of Colorado Law School, Boulder, Colorado, dated April 25 and 26, 2016 ("Schwartz Letters"); Bobby Franklin, President & CEO, National Venture Capital Association, dated April 26, 2016 ("NVCA Letter"); John Hayes, Chair, Corporate Governance Committee, Business Roundtable, dated April 26, 2016 ("Business Roundtable Letter"); John Endean, President, American Business Conference, dated April 28, 2016 ("American Business Conference Letter"); Marc M. Rossell, Chair, Securities Regulation Committee, Bar of the City of New York, dated May 20, 2016 ("New York City Bar Letter"); Heather C. Briccette, President & CEO, The Business Council of New York State, Inc., dated June 15, 2016 ("NYS Business Council Letter"); Darla Stuckey, President & CEO, Society for Corporate Governance, dated June 27, 2016 ("Society for Corporate Governance Letter"). *See also See* Letter to Brent J. Fields, Secretary, Commission, from David Strandberg, Associate Vice President, Nasdaq dated June 30, 2016 ("Response Letter").

[8] *See* proposed Rule 5250(b)(3)(A).

[9] *See* proposed Rule 5250(b)(3). *See also supra,* note 6 for a description of changes made in Amendment No 2 as compared to the original filing.

[10] *See supra* note 6.

[11] *See* proposed Rule 5250(b)(3)(A).

[12] *See id.*

[13] *See* proposed Rule 5250(b)(3)(B).

[14] *See* proposed Rule 5250(b)(3)(C).

[15] *See id.* See also supra note 6.

[16] *See* proposed Rule 5250(b)(3)(D). The proposed rule also provides that in, all other cases, the Company must submit a plan that satisfies Exchange staff that the Company has adopted processes and procedures designed to identify and disclose relevant agreements or arrangements.

[17] *See supra* note 6.

III. Comments on the Proposed Rule Change and Nasdaq's Response

As previously stated, the Commission received a total of eight comment letters from seven commenters.[18] Four commenters expressed general support for the proposal.[19] One of these commenters stated that third-party payment arrangements of the kind covered by the proposal "present numerous problems besides the obvious potential conflict of interest that shareholders should consider in voting for board members." [20] In addition, the commenter believed that "the ability to keep both arrangement and the terms thereof secret provides 'raiders' and other types of activists an unfair tactical advantage over the incumbent board members," and that "if an insurgent candidate is elected to the board, secrecy around that board member's outside compensation can inhibit the effective functioning of the board of directors." [21] Echoing similar beliefs, another of these commenters stated that full disclosure of the material terms of third party arrangements with a director is "a necessary element of understanding and assessing the ability of directors and director nominees to fulfill their fiduciary duties." [22] Another commenter stated its belief that "investors need to know if there are compensation arrangements for any director in which an entity other than the listed company is paying for that particular director's service." [23]

One comment letter stated its aim as ensuring that Nasdaq was fully informed as it considered whether to move forward with the proposed rule change, in view of what it described as the somewhat complex arrangements that can exist when a board member of an issuer is a general partner of a venture capital fund partnership that owns a substantial interest in the issuer and is also a member or an associate of the venture capital firm that formed the venture capital fund.[24] This commenter recommended that Nasdaq clarify the conditions of the exemption in the rule for pre-existing relationships as well as the degree of detail needed in disclosures required by the proposed rule.[25]

Finally, two commenters recommended that the proposed rule change not be approved.[26] One of these commenters indicated uncertainty as to whether the issues addressed by the Exchange's proposal are not adequately covered by existing Commission rules.[27] This commenter further believed that the Commission should "promote desirable uniformity in the nature of required disclosures to investors about director compensation arrangements at public companies, without differentiation based on the exchange on which a company's securities are listed." [28]

The other commenter opposing approval of the proposed rule change, similarly, believed that proposal "may be duplicative" because the Commission already has rules that "may already address the disclosures covered in the proposed rule change." [29] This commenter argued that "approving similar rules aimed at the same goal but from a different regulator would make compliance unnecessarily difficult and would not be an efficient use of resources," adding that if more disclosure was required by the proposal than by the Commission's rules, "investors in Nasdaq-listed companies would be receiving different information on these matters than investors in companies listed on other exchanges, which could lead to confusion." [30] The commenter further argued that the Nasdaq proposal would require companies to "unnecessarily incur costs and expend energy without any meaningful benefit to shareholders." [31]

In its Response Letter, Nasdaq cited the letters that had been received in support of its proposed rule change, noting that the submitters of these letters shared the Exchange's view that the proposed disclosures would be meaningful to shareholders and relevant to their investment and voting decisions. In response to the view of opposing commenters that existing Commission regulations may already require the disclosure mandated by the proposed rule, Nasdaq noted that the proposal would not require separate disclosure when disclosure sufficient to satisfy the proposed rule has been made by a company under existing Commission proxy rules. Acknowledging that there are various Commission rules that may, in some circumstances, apply to third party director payments, Nasdaq stated, nonetheless, that the nature, scope and timing of these required disclosures may not in all cases be the same as the disclosure mandated by its proposal.[32] Nasdaq averred that it had considered the concerns raised in the comment letters, but believes the proposal as amended adequately addresses them.[33]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[34] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[35] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit, among other things, unfair discrimination between issuers.

The development, implementation, and enforcement of standards governing the initial and continued listing of securities on an exchange are activities of critical importance to financial markets and the investing public. Listing requirements, among other things, serve as a means for an exchange to provide listed status only to companies that meet certain initial and continued quantitative and qualitative criteria that help to ensure that fair and orderly markets can be maintained once the company is listed. The corporate governance standards embodied in the listing standards of national securities exchanges, in particular, play an important role in assuring that exchange-listed companies observe good governance practices, including that listed companies provide adequate disclosure to allow investors to make informed investment and voting decisions. The Commission has long encouraged exchanges to adopt and strengthen their corporate governance listing standards in order to, among other things, provide greater transparency into the governance processes of listed issuers and enhance investor confidence in the securities markets.

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[18] *See supra* note 7.

[19] *See* Schwartz Letters, Business Roundtable Letter, American Business Conference Letter, and Society for Corporate Governance Letter, *supra* note 7.

[20] *See* American Business Conference Letter.

[21] *Id.*

[22] *See* Business Roundtable Letter.

[23] *See* Society for Corporate Governance Letter.

[24] *See* NVCA Letter, supra note 7.

[25] *Id.* The NVCA Letter also noted that potential restrictions on the ability of individuals who receive compensation to serve as a director could adversely affect venture capital firms due to the structure of venture capital funds. *See id.* The Commission knows that this is not within the scope of the Nasdaq proposed rule change.

[26] *See* New York City Bar Letter and NYS Business Council Letter, *supra* note 7.

[27] *See* New York City Bar Letter *id.*

[28] *Id.* The commenter cited, in this regard, the Commission's Disclosure Effectiveness Project.

[29] *See* NYS Business Council Letter, *supra* note 7.

[30] *Id.*

[31] *Id.*

[32] Nasdaq cited its proposal's ongoing annual and remedial disclosure requirements as examples. *See supra* note 7.

[33] In this regard, Nasdaq specifically mentioned the concerns raised in the NVCA Letter around board service by venture capital board members.

[34] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78f(b)(5).

The majority of the commenters, as described above, were supportive of the proposal and thought it was important to ensure that investors have material information about third party payments to nominees and existing directors. Two commenters, however, requested that the Commission not approve the Nasdaq's proposal.[36] The commenters were concerned that the Exchange requirements may be duplicative of Commission disclosure requirements and that disclosure of director compensation is a matter more suited to uniform regulation by the Commission.

The Commission recognizes that there may be some overlap with Commission disclosure requirements. Depending on the facts and circumstances, various provisions under the federal securities laws, such as Items 401(a) and 402(k) of Regulation S–K, Item 5(b) of Schedule 14A, and Item 5.02(d) of Form 8–K, may require disclosure of third party compensation arrangements with or payments to nominees and/or board members.[37] We note that it is not unusual for national securities exchanges to adopt disclosure requirements in their listing rules that supplement or overlap with disclosure requirements otherwise imposed under the federal securities laws. For example, notwithstanding the requirements imposed by the federal securities laws to report certain material events shortly after they occur on Form 8–K, national securities exchanges maintain separate, broader disclosure rules that require prompt disclosure of material information.[38] These and other disclosure-related listing standards help to ensure that listed companies maintain compliance with the disclosure requirements under the federal securities laws and contribute to the maintenance of fair and orderly markets by providing investors with material and current information necessary for informed investment and voting decisions.

The proposal contains certain exceptions to address some of the concerns raised by commenters about overlap with Commission rules. For example, an exception is provided for disclosure of arrangements or agreements that have been disclosed under Item 5(b) of Schedule 14A or Item 5.02(d) of Form 8–K in the current fiscal year. In addition, in Amendment No. 2, Nasdaq made clear that if, in response to a Commission disclosure requirement, a company provides disclosure in a definitive proxy or information statement sufficient to comply with the proposed rule, such disclosure would also satisfy the company's disclosure obligation under the Nasdaq rule. Further, the proposal permits listed companies, to the extent the disclosure is not otherwise required in a proxy or information statement, to disclose the information on a Web site, either directly or through a hyperlink. This should help to mitigate any disclosure burden on companies that have already provided the required disclosure in a prior Commission filing because the rule only would require the company to post a link to that filing on its Web site.

To the extent, there are certain factual scenarios that would require disclosure not otherwise required under Commission rules, we believe that it is within the purview of a national securities exchange to impose heightened governance requirements, consistent with the Act, that are designed to improve transparency and accountability into corporate decision making and promote investor confidence in the integrity of the securities markets.[39]

Concerning the instant proposal, to the extent that it would, in certain situations, provide investors and market participants additional information to make informed investment and voting decisions, we believe it is consistent with the requirements of Section 6(b)(5) of the Act.

Finally, the Commission notes that certain changes and clarifications were made to the proposal by Nasdaq in response to comments. Amendment No. 2 clarified that non-cash compensation includes indemnification and further clarified in the proposed rule language that the material terms of the agreement or arrangement that need to be disclosed are those relating to compensation and not limited to cash payments. Further, Nasdaq amended the rule language concerning an exception to disclosure relating to relationships that existed prior to a nominee's candidacy. That proposed change states that no additional disclosure is required if the prior relationship between the nominee and the third party has been publicly disclosed in a definitive proxy or annual report. The Exchange further clarified in the amended rule language in proposed IM–5250–2 the timing of when the disclosure needs to be made when the disclosure is posted on the Company's Web site. These changes, among the others made in Amendment No. 2, help to clarify the proposal and address some of the concerns expressed by the commenters.

V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–NASDAQ–2016–013 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

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[36] *See* New York City Bar Letter and Business Council Letter, *supra* note 7.

[37] In addition to these specific disclosure requirements, information about third party compensation arrangements may be required under other provisions of the federal securities laws which require disclosure of any additional material information necessary to make the statements included in the relevant filing, in light of the circumstances under which they are made, not misleading. *See, e.g.,* Exchange Act Rules 10b–5, 14a–9, and 14c–6.

[38] *See, e.g.,* NYSE Section 202.05; Nasdaq Rule 5250(b)(1).

[39] For example, the Commission has previously determined that exchange listing standards relating to audit committee independence requirements that included heightened requirements beyond those specifically mandated by Rule 10A–3 were consistent with the Act. *See* Securities Exchange Act Release No. 48745 (Nov. 4, 2003), 68 FR 64154 (Nov. 12, 2003).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–013 and should be submitted on or before July 28, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of the notice of Amendment No. 2 in the **Federal Register**. As noted above, in Amendment No. 2, the exchange clarified various aspects of the proposed rule's applicability and included new provisions that enhance the proposal.[40] The Commission believes the clarifications in Amendment No. 2 would provide market participants with greater transparency regarding the requirements for listed companies to disclose compensation or other payments by third parties to board of director's members or nominees under Nasdaq's rules. In addition, in Amendment No. 2, the Exchange revised the proposed date of effectiveness of the proposed rule change.[41] The Commission believes this revision will allow listed companies appropriate time to comply with the proposed rule change.

Because Amendment No. 2 provided additional transparency to the disclosure requirements imposed by the proposed rule change, enhanced its provisions, and provided a revised date of effectiveness which will allow listed companies time to comply with the new requirements, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[42]

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[43] that the proposed rule change (SR–NASDAQ–2016–013), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Brent J. Fields,

Secretary.

[FR Doc. 2016–16123 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78203; File No. SR–ISE–2016–15]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

June 30, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2016, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules to extend a pilot program to quote and to trade certain options classes in penny increments ("Penny Pilot Program"). The text of the proposed rule change is available on the Exchange's Web site *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq–100 Index Tracking Stock ("QQQQ"), the SPDR S&P 500 Exchange Traded Fund ("SPY") and the iShares Russell 2000 Index Fund ("IWM"), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2016.[3] The Exchange proposes to extend the Penny Pilot Program through December 31, 2016, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2016. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning December 1, 2015, and ending May 31, 2016). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

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[40] *See supra* note 6.

[41] *See id.*

[42] 15 U.S.C. 78s(b)(2).

[43] 15 U.S.C. 78s(b)(2).

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 75312 (June 26, 2015), 80 FR 38251 (July 2, 2015) (SR–ISE–2015–21).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml);* or
- Send an Email to *rule-comments@sec.gov. Please include File No. SR–ISE–2016–15 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2016–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2016–15 and should be submitted by July 28, 2016.

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16030 Filed 7–6–16; 8:45 am]

BILLING CODE 8011–01–P

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[14] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2016–0024]

Consent Based Social Security Number Verification (CBSV) Service

AGENCY: Social Security Administration.

ACTION: Notice of revised transaction fee for consent based Social Security number verification service.

SUMMARY: We provide fee-based Social Security number (SSN) verification service to enrolled private businesses and government agencies who obtain a valid, signed consent form from the Social Security number holder. We originally published a notice announcing the CBSV service in the **Federal Register** on August 10, 2007.

Based on the consent forms, we verify the number holders' SSNs for the requesting party. The Privacy Act of 1974 (5 U.S.C. 552a(b)), section 1106 of the Social Security Act (42 U.S.C. 1306) and our regulation at 20 CFR 401.100, establish the legal authority for us to provide SSN verifications to third party requesters based on consent.

The CBSV process provides the business community and other government entities with consent-based SSN verifications in high volume. We developed CBSV as a user-friendly, internet-based application with safeguards that will protect the public's information. In addition to the benefit of providing high volume, centralized SSN verification services to the business community in a secure manner, CBSV provides us with cost and workload management benefits.

New Information: To use CBSV, interested parties must pay a one-time non-refundable enrollment fee of $5,000. Currently, users also pay a fee of $1.40 per SSN verification transaction in advance of services. We agreed to calculate our costs periodically for providing CBSV services and adjust the fees as needed. We also agreed to notify our customers who currently use the service and allow them to cancel or continue using the service at the new transaction fee.

Based on the most recent cost analysis, we will adjust the fiscal year 2017 fee to $1.00 per SSN verification transaction. New customers will still be responsible for the one-time $5,000 enrollment fee.

DATES: The changes described above are effective October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Wilkins, Office of Data Exchange and Policy Publications, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, [410–966–4965], for more information about the CBSV service, visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov/cbsv.*

Dated: June 30, 2016.

Michael Wilkins,

Branch Chief, Office of Data Exchange & Policy Publications.

[FR Doc. 2016–16095 Filed 7–6–16; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 319 (Sub-No. 5X)]

Florida Central Railroad Company, Inc.—Discontinuance of Service Exemption—in Lake County, Fla.

Florida Central Railroad Company, Inc. (Florida Central), filed a verified notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 4.4-mile portion of rail line between milepost ASD 818.1 in Eustis, through a milepost equation at the Eustis Canal Bridge where milepost ASD 817.0 = milepost ASC 815.1, to the end of the line at milepost ASC 818.4 in Umatilla, in Lake County, Fla. (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 32726 and 32784.

Florida Central has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will become effective on August 6, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)[2] must be filed by July 18, 2016.[3] Petitions to reopen must be filed by July 27, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to Florida Central's representative: Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: June 30, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Tia Delano,

Clearance Clerk.

[FR Doc. 2016–16101 Filed 7–6–16; 8:45 am]

BILLING CODE 4915–01–P

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[1] Florida Central is a Class III common carrier that operates approximately 64 miles of rail line in central Florida. Florida Central commenced operations after acquiring several lines, including the Line, from CSX Transportation, Inc. (CSXT). *See Fla. Cent. R.R.—Acquis. & Operation—Seaboard Sys. R.R.,* FD 30923 (ICC served Dec. 10, 1986). Florida Central states that, while it acquired the track assets comprising the Line from CSXT in 1986, CSXT retained ownership of the underlying right-of-way of the Line.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[3] Because Florida Central is seeking to discontinue service, not to abandon the Line, trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during abandonment, this discontinuance does not require an environmental review.

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on August 4, 2016, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. The Commission will also hear testimony on a proposal to rescind its Information Technology Services Fee Policy. Such projects and the proposal are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for September 8, 2016, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposal. The deadline for the submission of written comments is August 15, 2016.

DATES: The public hearing will convene on August 4, 2016, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is August 15, 2016.

ADDRESSES: The public hearing will be conducted at the Pennsylvania State Capitol, Room 8E–B, East Wing, Commonwealth Avenue, Harrisburg, PA.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436. Information concerning the applications for these projects is available at the SRBC Water Resource Portal at *www.srbc.net/wrp.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/pubinfo/docs/2009-02_Access_to_Records_Policy_20140115.pdf.*

SUPPLEMENTARY INFORMATION: The public hearing will cover a proposed rescission to the Commission's Information Technology Services Fee Policy, as posted on the SRBC Public Participation Center Web page at *www.srbc.net/pubinfo/publicparticipation.htm.* The public hearing will also cover the following projects:

Projects Scheduled for Action

1. Project Sponsor and Facility: Bloomfield Borough Water Authority, Centre Township, Perry County, PA. Application for groundwater withdrawal of up to 0.302 mgd (30-day average) from Well 3.

2. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Susquehanna River), Great Bend Township, Susquehanna County, PA. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20120904).

3. Project Sponsor and Facility: Elizabethtown Area Water Authority, Elizabethtown Borough, Lancaster County, PA. Application for groundwater withdrawal of up to 0.201 mgd (30-day average) from Well 1.

4. Project Sponsor and Facility: Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, PA. Application for groundwater withdrawal of up to 0.106 mgd (30-day average) from Well 3.

5. Project Sponsor and Facility: Elizabethtown Area Water Authority, Elizabethtown Borough, Lancaster County, PA. Application for groundwater withdrawal of up to 0.130 mgd (30-day average) from Well 4.

6. Project Sponsor and Facility: Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, PA. Application for groundwater withdrawal of up to 0.187 mgd (30-day average) from Well 8.

7. Project Sponsor and Facility: Elizabethtown Area Water Authority, Mount Joy Township, Lancaster County, PA. Application for groundwater withdrawal of up to 0.216 mgd (30-day average) from Well 9.

8. Project Sponsor: Exelon Generation Company, LLC. Project Facility: Muddy Run Pumped Storage Project, Drumore and Martic Townships, Lancaster County, PA. Application for an existing hydroelectric facility.

9. Project Sponsor and Facility: Geisinger Health System, Mahoning Township, Montour County, PA. Modification to increase consumptive water use by an additional 0.319 mgd (peak day), for a total consumptive water use of up to 0.499 mgd (peak day) (Docket No. 19910103).

10. Project Sponsor and Facility: Gilberton Power Company, West Mahanoy Township, Schuylkill County, PA. Application for renewal of consumptive water use of up to 1.510 mgd (peak day) (Docket No. 19851202).

11. Project Sponsor and Facility: Gilberton Power Company, West Mahanoy Township, Schuylkill County, PA. Application for groundwater withdrawal of up to 1.870 mgd (30-day average) from the Gilberton Mine Pool.

12. Project Sponsor and Facility: Manbel Devco I, LP, Manheim Township, Lancaster County, PA. Application for groundwater withdrawal of up to 4.320 mgd (30-day average) from the Belmont Quarry.

13. Project Sponsor: Pennsylvania American Water Company. Project Facility: Nittany Water System, Walker Township, Centre County, PA. Application for groundwater withdrawal of up to 0.432 mgd (30-day average) from Nittany Well 1.

14. Project Sponsor and Facility: Republic Services of Pennsylvania, LLC, Windsor and Lower Windsor Townships, York County, PA. Application for renewal of groundwater withdrawal of up to 0.350 mgd (30-day average) from groundwater remediation wells (Docket No. 19860903).

15. Project Sponsor and Facility: SWN Production Company, LLC, Herrick Township, Bradford County, PA. Application for groundwater withdrawal of up to 0.101 mgd (30-day average) from the Fields Supply Well.

16. Project Sponsor and Facility: Talisman Energy USA Inc. (Susquehanna River), Sheshequin Township, Bradford County, PA. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20120912).

17. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Chiques Creek), West Hempfield Township, Lancaster County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

18. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-1), Conestoga Township, Lancaster County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

19. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-1), Conestoga Township, Lancaster County, PA. Application for consumptive water use of up to 0.100 mgd (peak day).

20. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Conestoga River-2), Conestoga Township, Lancaster County, PA. Application for surface water withdrawal of up to 2.592 mgd (peak day).

21. Project Sponsor and Facility: Transcontinental Gas Pipe Line

Company, LLC. Project: Atlantic Sunrise (Conestoga River-2), Conestoga Township, Lancaster County, PA. Application for consumptive water use of up to 0.100 mgd (peak day).

22. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Deep Creek), Hegins Township, Schuylkill County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

23. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Fishing Creek), Sugarloaf Township, Columbia County, PA. Application for surface water withdrawal of up to 2.592 mgd (peak day).

24. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Little Fishing Creek), Mount Pleasant Township, Columbia County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

25. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Pequea Creek), Martic Township, Lancaster County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

26. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Roaring Creek), Franklin Township, Columbia County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

27. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River), Eaton Township, Wyoming County, PA. Application for surface water withdrawal of up to 2.592 mgd (peak day).

28. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River), Eaton Township, Wyoming County, PA. Application for consumptive water use of up to 0.100 mgd (peak day).

29. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-1), Montour Township and Catawissa Borough, Columbia County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

30. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-1), Montour Township and Catawissa Borough, Columbia County, PA. Application for consumptive water use of up to 0.100 mgd (peak day).

31. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-2), Montour Township, Columbia County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

32. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Susquehanna River-2), Montour Township, Columbia County, PA. Application for consumptive water use of up to 0.100 mgd (peak day).

33. Project Sponsor and Facility: Transcontinental Gas Pipe Line Company, LLC. Project: Atlantic Sunrise (Swatara Creek), East Hanover Township, Lebanon County, PA. Application for surface water withdrawal of up to 2.880 mgd (peak day).

34. Project Sponsor and Facility: Village of Windsor, Broome County, NY. Application for groundwater withdrawal of up to 0.380 mgd (30-day average) from Well 2.

35. Project Sponsor and Facility: West Manchester Township Authority, West Manchester Township, York County, PA. Application for groundwater withdrawal of up to 0.216 mgd (30-day average) from Well 7.

Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any project or proposal listed above. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Rules of conduct will be posted on the Commission's Web site, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such rules at the hearing. Written comments on any project listed above may also be mailed to Mr. Jason Oyler, General Counsel, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA. 17110–1788, or submitted electronically through *www.srbc.net/pubinfo/publicparticipation.htm.* Comments mailed or electronically submitted must be received by the Commission on or before August 15, 2016, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: June 30, 2016.

Andrew D. Dehoff,

Executive Director.

[FR Doc. 2016–15994 Filed 7–6–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

GPS Adjacent Band Compatibility Assessment Testing

AGENCY: Office of the Assistant Secretary for Research and Technology, Department of Transportation.

ACTION: Notice.

SUMMARY: The Department of Transportation, through the Office of the Assistant Secretary for Research and Technology (OST–R), is providing notice to the public that it will conduct additional testing of Global Positioning System/Global Navigation Satellite System ("GPS/GNSS") receivers this July as part of the DOT Adjacent Band Compatibility Study ("the Study"). The goal of the Study is to evaluate the adjacent radio frequency band power levels that can be tolerated by GPS/GNSS receivers, and advance the Department's understanding of the extent to which such power levels impact devices used for transportation safety purposes, among other GPS/GNSS applications. In April 2016, radiated testing of GNSS devices took place in an anechoic chamber at the U.S. Army Research Laboratory at the White Sands Missile Range (WSMR) facility in New Mexico.

The Study provides for testing categories of receivers that include aviation (non-certified), cellular, general location/navigation, high precision and networks, timing, and space-based receivers. Approximately twelve receivers, representing each of these receiver categories, will be selected for additional testing from those receivers tested in April.

FOR FURTHER INFORMATION CONTACT: Stephen Mackey at the DOT/OST–R Volpe National Transportation Systems Center at *stephen.mackey@dot.gov* or 617–494–2753.

SUPPLEMENTARY INFORMATION: The Department obtained input from broad public outreach over the past year that included four public meetings with stakeholders on September 18 and December 4, 2014, and March 12 and October 2, 2015, public issuance of a draft test plan on September 9, 2015 (*see* 80 FR 54368), and comments received regarding the test plan. The final test plan was published March 9, 2016 (see 81 FR 12564) and requested voluntary participation in this Study by any interested GPS/GNSS device manufacturers or other parties whose products incorporate GPS/GNSS devices.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Discussion at the DOT public meetings highlighted the importance of conducting GPS/GNSS receiver acquisition testing which had always been planned as part of the DOT GPS Adjacent Band Compatibility Assessment, but was not feasible due to time constraints during the radiated test conducted at WSMR in April. The goal of the additional lab testing to be conducted at Zeta Associates in Fairfax, Virginia and MITRE Corporation in Bedford, Massachusetts, is:

(1) Receiver characterization for comparison with results obtained in April at the anechoic chamber at the U.S. Army Research Laboratory;

(2) Evaluation of Out Of Band Emission (OOBE) interference at prescribed and proposed levels with Long Term Evolution (LTE) uplink and downlink signals;

(3) GPS/GNSS signal acquisition characterization.

The same instrumentation will be used for these conducted tests at the Zeta Associates laboratory as for the radiated test at the U.S. Army Research Laboratory at WSMR, utilizing the same GNSS playback system and interference generation equipment with modifications to support OOBE and acquisition test requirements;

(4) Antenna characterizations.

The acquisition test will be conducted using 10 MHz LTE signals at four frequencies:

- Base station frequencies of 1525 MHz and 1550 MHz
- Hand-set frequencies of 1620 MHz and 1645 MHz

Information referenced in this Notice and further background can be viewed at: *http://www.gps.gov/spectrum/ABC/.*

Issued in Washington, DC, on June 29, 2016.

Gregory D. Winfree,

Assistant Secretary for Research and Technology.

[FR Doc. 2016–16136 Filed 7–6–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Non-Renewal: Greenwich Insurance Company

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570, 2015 Revision, published July 1, 2015, at 80 FR 37735.

FOR FURTHER INFORMATION CONTACT: Surety Bond Section at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds will not be renewed, effective June 30, 2016. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2015 Revision, to reflect this change.

With respect to any bonds currently in force with the company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company, and bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Bureau of the Fiscal Service, Financial Accounting and Services Division, Surety Bond Section, 3700 East-West Highway, Room 6D22, Hyattsville, MD 20782.

Dated: June 30, 2016.

Melvin Saunders,

Acting Manager, Financial Accounting and Services Branch.

[FR Doc. 2016–15999 Filed 7–6–16; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on August 8–9, 2016, in the auditorium of Building 7 at the San Francisco VA Medical Center, 4150 Clement Street, San Francisco, CA, from 9:00 a.m. until 4:15 p.m. (Pacific) on August 8 and from 8:30 a.m. to 1:00 p.m. on August 9. All sessions will be open to the public, and for interested parties who cannot attend in person, there is a toll-free telephone number (800) 767–1750; access code 56978#.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War in 1990–1991.

The Committee will review VA program activities related to Gulf War Veterans' illnesses, and updates on relevant scientific research published since the last Committee meeting. Presentations will include updates on the VA Gulf War Research Program, along with presentations describing new areas of research that can be applied to the health problems of Gulf War Veterans. Also, there will be a discussion of Committee business and activities.

The meeting will include time reserved for public comments each afternoon. A sign-up sheet for 5-minute comments will be available at the meeting. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Victor Kalasinsky via email at *Victor.Kalasinsky@va.gov.* Any member of the public seeking additional information should contact Dr. Kalasinsky, Designated Federal Officer, at (202) 443–5600.

Dated: July 1, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–16115 Filed 7–6–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Cost-Based and Inter-Agency Billing Rates for Medical Care or Services Provided by the Department of Veterans Affairs

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This document updates the Cost-Based and Inter-Agency billing rates for medical care or services provided by the Department of Veterans Affairs (VA) that apply in certain circumstances.

DATES: The rates set forth herein are effective July 7, 2016 and until further notice.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382–2521. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: VA's methodology for computing Cost-Based and Inter-Agency billing rates for medical care or services provided by VA is set forth in 38 CFR 17.102(h). Two sets of rates are obtained by applying this methodology, Cost-Based rates and Inter-Agency rates. Cost-Based rates apply to medical care and services that are provided by VA:

(a) In error or based on tentative eligibility;

(b) In a medical emergency;

(c) To pensioners of allied nations; and

(d) For research purposes in circumstances under which the VA Medical Services appropriation is to be reimbursed by the VA Research appropriation.

Inter-Agency rates apply to medical care and services that are provided by VA to beneficiaries of the Department of Defense (DoD) or other Federal agencies, when the care or services provided is not covered by an applicable sharing agreement. The Inter-Agency rates contained in this notice do not apply to sharing agreements between VA and DoD, unless otherwise stated. The calculations for the Cost-Based and Inter-Agency rates are the same with two exceptions. Inter-Agency rates are all-inclusive, and are not broken down into three components (Physician; Ancillary; and Nursing, Room and Board), and Inter-Agency rates do not include standard fringe benefit costs that cover government employee retirement, disability costs, and return on fixed assets. When VA pays for medical care or services from a non-VA source under circumstances in which the Cost-Based or Inter-Agency Rates would apply if the care or services had been provided by VA, the charge for such care or services will be the actual amount paid by VA for the care or services. Inpatient charges will be at the per diem rates shown for the type of bed section or discrete treatment unit providing the care.

The following table depicts the Cost-Based and Inter-Agency Rates that are effective upon publication of this notice and will remain in effect until the next **Federal Register** notice is published. These rates supersede those established by the **Federal Register** notice published on November 4, 2014, at 79 FR 65479.

	Cost-based rates	Inter-agency rates
A. Hospital Care per inpatient day:		
General Medicine:		
All Inclusive Rate	$3,720	$3,553
Physician	445	
Ancillary	969	
Nursing Room and Board	2,306	
Neurology:		
All Inclusive Rate	3,564	3,401
Physician	522	
Ancillary	941	
Nursing Room and Board	2,101	
Rehabilitation Medicine:		
All Inclusive Rate	2,477	2,354
Physician	281	
Ancillary	757	
Nursing Room and Board	1,439	
Blind Rehabilitation:		
All Inclusive Rate	1,741	1,653
Physician	140	
Ancillary	865	
Nursing Room and Board	736	
Spinal Cord Injury:		
All Inclusive Rate	2,631	2,502
Physician	326	
Ancillary	662	
Nursing Room and Board	1,643	
Surgery:		
All Inclusive Rate	5,910	5,642
Physician	651	
Ancillary	1,793	
Nursing Room and Board	3,466	
General Psychiatry:		
All Inclusive Rate	1,771	1,679
Physician	167	
Ancillary	279	
Nursing Room and Board	1,325	
Substance Abuse (Alcohol and Drug Treatment):		
All Inclusive Rate	1,861	1,765
Physician	178	
Ancillary	431	
Nursing Room and Board	1,252	
Psychosocial Residential Rehabilitation Program:		
All Inclusive Rate	695	662

	Cost-based rates	Inter-agency rates
Physician	44	
Ancillary	73	
Nursing Room and Board	578	
Intermediate Medicine:		
All Inclusive Rate	2,233	2,126
Physician	110	
Ancillary	328	
Nursing Room and Board	1,795	
Poly-trauma Inpatient:		
All Inclusive Rate	3,227	3,057
Physician	367	
Ancillary	986	
Nursing Room and Board	1,874	
B. Nursing Home Care, Per Day:		
All Inclusive Rate	1,197	1,138
Physician	37	
Ancillary	162	
Nursing Room and Board	998	
C. Outpatient Medical Treatments:		
Outpatient Visit (to include Ineligible Dental Care)	335	319
Outpatient Physical Medicine & Rehabilitation Service Visit	212	199
Outpatient Poly-trauma/Traumatic Brain Injury	537	510

Note: Outpatient Prescriptions will be billed at Drug Cost plus Administrative Fee.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on June 30, 2016, for publication.

Dated: June 30, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2016–15956 Filed 7–6–16; 8:45 am]

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FEDERAL REGISTER

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Part II

Federal Communications Commission

47 CFR Parts 1 and 54

Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[WC Docket Nos. 10–90, 14–58, 14–259; FCC 16–64]

Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules to implement a competitive bidding process for Phase II of the Connect America Fund that will harness market forces to expand broadband in targeted rural areas. The Commission also adopts rules to establish the framework for the Remote Areas Fund auction to address those areas that receive no winning bids in the Phase II auction.

DATES: Effective August 8, 2016, except for the amendments to §§ 1.21001(b)(6), 54.313(e)(2), 54.315, 54.316(a)(4), (b)(4) and (5), and (c)(2), 54.804 (b) through (d), and 54.806, which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–0428 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket Nos. 10–90, 14–58, 14–259; FCC 16–64, adopted on May 25, 2016 and released on May 26, 2016. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or at the following Internet address:*https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-64A1.pdf.*

The Further Notice of Proposed Rulemaking (FNPRM) that was adopted concurrently with the Report and Order is published elsewhere in this issue of the **Federal Register**.

I. Introduction

1. Over the last several years, the Commission has engaged in a modernization of its universal service regime to support networks capable of providing voice and broadband, including developing a new forward-looking cost model to calculate the cost of providing service in rural and high-cost areas. In 2015, 10 price cap carriers accepted an offer of Phase II support calculated by a cost model in exchange for a state-level commitment to deploy and maintain voice and broadband service in the high-cost areas in their respective states. With this Report and Order (Order), the Commission now adopts rules to implement a competitive bidding process for Phase II of the Connect America Fund.

2. Specifically, building on decisions already made by the Commission, in this Order, the Commission:

- Adopt public interest obligations for recipients of support awarded through the Phase II competitive bidding process, that will be known in advance of the auction and that will continue for the duration of the term of support, recognizing that competitive bidding is likely to be more efficient if potential bidders know what their performance standards will be before bids are made. In particular, the Commission establishes four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, all at reasonably comparable rates, and for each tier will differentiate between bids that would commit to either lower or higher latency.
  - The Commission's minimum performance tier requires that bidders commit to provide broadband speeds of at least 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps) and offer at least 150 gigabytes (GB) of monthly usage.
  - The Commission's baseline performance tier requires that bidders commit to provide at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps) and offer a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher.
  - The Commission's above-baseline performance tier requires that bidders commit to provide at least 100 Mbps downstream and 20 Mbps upstream (100/20 Mbps) and offer an unlimited monthly usage allowance.
  - The Commission's Gigabit performance tier requires that bidders commit to provide at least 1 Gigabit per second (Gbps) downstream and 500 Mbps upstream and offer an unlimited monthly usage allowance.
  - For each of the four tiers, bidders will designate one of two latency performance levels: (1) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds (ms), or (2) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).
- Adopt the same interim service milestones for winning bidders in the Phase II auction as for price cap carriers that accepted Phase II model-based support.
- Finalize the Commission's decisions regarding areas eligible for the Phase II competitive bidding process.
- Establish a budget for the Phase II competitive bidding process of $215 million in annual support.
- Provide general guidance on auction design, with the specific details to be determined by the Commission at a future date in the *Auction Procedures Public Notice,* after further opportunity for comment. The Commission will use weights to account for the different characteristics of service offerings that bidders propose to offer when ranking bids. The Commission expresses its preference for a multi-round auction format and for setting the minimum biddable unit as a census block group containing any eligible census blocks. The Commission concludes that reserve prices will not exceed support amounts determined by the Connect America Cost Model (CAM).
- Adopt a two-step application process, similar to Commission spectrum auctions and the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions. In the pre-auction short-form application, a potential bidder will need to establish its baseline financial and technical capabilities in order to be eligible to bid. In the long-form review process, winning bidders will be required to provide additional information regarding their qualifications. They will be required to obtain an acceptable letter of credit and designation as an eligible telecommunications carrier (ETC) before funding is authorized.
- Establish a baseline forfeiture for bidders that default before funding authorization.
- Establish a 180-day post-auction deadline for winning bidders to submit proof of their ETC designation during long-form review and forbear from the section 214(e)(5) service area conformance requirements.
- Adopt reporting requirements that will enable the Commission to monitor

recipients' progress in meeting their interim deployment obligations, and a process by which the Wireline Competition Bureau (Bureau) or the Wireless Telecommunications Bureau will authorize the Universal Service Administrative Company (USAC) to draw on a letter of credit in the event of performance default.

- Adopt rules to establish the framework for the Remote Areas Fund, which will award support through a competitive bidding process to occur expeditiously after conclusion of the Phase II auction.

II. Public Interest Obligations

A. Performance Requirements

3. *Discussion.* Consistent with the Commission's previous decisions on performance requirements and the record in this proceeding, the Commission now establishes technology-neutral standards for the Phase II auction as described below. The Commission will accept bids for four service tiers with varying speed and usage allowances, and for each tier will differentiate between bids that would offer either lower or higher latency. The Commission has already decided that 10/1 Mbps should not be the Commission's end goal for support recipients over a 10-year term, and that is why it adopts a variety of service tiers for bids in the Phase II auction. The Commission is guided by the statutory goal in section 254 of ensuring that consumers in rural and high-cost areas of the country have access to advanced telecommunications and information services that are reasonably comparable to those services in urban areas, at reasonably comparable rates. The Commission expects and encourages participants to innovate and provide better service over the 10-year term.

4. The following charts summarize the Commission's approach:

Performance tier	Speed	Usage allowance
Minimum	≥10/1 Mbps	≥150 GB.
Baseline	≥25/3 Mbps	≥150 GB or U.S. median, whichever is higher.
Above Baseline	≥100/20 Mbps	Unlimited.
Gigabit	≥1 Gbps/500 Mbps	Unlimited.

Latency	Requirement
Low Latency	≤100 ms.
High Latency	≤750 ms & MOS of ≥4.

5. The tiers set forth below are grounded in prior Commission Orders setting performance obligations requirements for speed and usage, as well as latency, that together must be met for the receipt of high-cost universal service support, and reflect the diversity of broadband offerings in the marketplace today. The Commission wants to maximize the number of consumers served within its finite budget. At the same time, the Commission sees the value to consumers in rural markets of having access to service during the 10-year term of support that exceeds its baseline requirements. The Commission wants to ensure that rural America is not left behind, and the consumers in those areas benefit from innovation and advances in technology. All things considered, the Commission values higher speeds over lower speeds, higher usage allowances over lower usage allowances, and lower latency over higher latency. The Commission also sees the benefits to achieving its other universal service objectives if a Phase II service provider will be able to provide broadband adequate to meet the needs of the entire community, including schools, libraries and rural health care providers, potentially reducing the overall cost of USF to consumers.

6. As discussed further below, all bids will be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards. The Commission believes that this approach strikes a balance by providing sufficient granularity with respect to the performance characteristics of broadband offerings, while maintaining an auction design that will encourage a broad range of providers to participate in the auction. The Commission discusses its approach to ranking these service tiers below and seeks comment in the concurrently adopted Further Notice on auction procedures to assign weights to each tier and latency combination.

7. The Commission recognizes that some commenters have expressed concerns that it is difficult to plan a network deployment not knowing the performance obligations that may exist at the end of the 10-year term. Competitive bidding is likely to be more efficient if potential bidders know what their performance standards will be before bids are made. The Commission finds that establishing the service requirements now is preferable to doing so after support has been awarded, as it will provide more certainty for potential bidders. Winning bidders that comply with the performance requirements the Commission establishes today for each tier of service for the duration of the 10-year term will be deemed in compliance even if the Commission subsequently establishes different standards in a later proceeding (*e.g.*, the standards that will apply when it awards support through a Phase III auction after the six-year term of support for price cap carriers accepting the offer of model-based support).

8. *Minimum Performance Tier.* As a minimum, the Commission will consider bids that will meet standards for speed consistent with those applicable to the price cap carriers that accepted the offer of model-based support. Specifically, in the Phase II auction, the Commission will allow for bids that offer at least 10/1 Mbps speeds and offer at least 150 GB of monthly usage.

9. The Commission does so in recognition that some bidders may not be able to meet the speed requirement it establishes below for baseline performance in some areas. For example, there may be some areas where wireline telecommunications carriers—either incumbents or competitive carriers—may extend fiber closer to the end user but will only be able to provide 10/1 Mbps service. Providing flexibility for bidders to relax the speed standard where necessary will enable a broader range of providers to participate in the Phase II competitive bidding process.

10. The Commission is not persuaded to further roll back the minimum speed for Phase II to 4/1 Mbps, as WISPA and USTelecom have suggested. The Commission found ample basis in the record for revising the minimum speed requirement to 10/1 Mbps, when it did so in December 2014, and the most recent data indicate that a majority of Americans subscribe to speeds today that are higher than 10/1 Mbps.

11. The Commission recognizes that wireless and satellite providers have argued that a minimum usage allowance of even 100 GB is unrealistic for spectrum-based networks that have capacity limitations, and that the standards should be set at levels that do not exclude spectrum-based services.

The Commission notes, however, that winning bidders will be free to offer an array of service plans, not all of which would provide the minimum 150 GB usage allowance. The 150 GB plan could thus be one of several offerings. The Commission merely require that bidders must offer at least one service offering at a reasonably comparable rate that meets the minimum usage allowance.

12. Similarly, the Commission is not persuaded that it should relax this requirement to permit bidders to provide only 50 GB of usage, as suggested by one commenter. Winning bidders will be receiving support that will enable them to offer a service plan with the required usage allowance, and they will be free to offer other service plans with a lower usage allowance at a lower price, which may well prove attractive to consumers in the marketplace. The Commission is requiring only that at least one offering in Phase II funded areas meets or exceeds all requirements.

13. *Baseline Performance Tier.* The Commission now concludes that the baseline tier for the Phase II auction will be speeds of 25 Mbps downstream and 3 Mbps upstream. The Commission's decision to establish this baseline performance standard for Phase II based on the highest speed adopted by a majority of fixed broadband subscribers builds on the approach it adopted in December 2014.

14. For usage, consistent with the approach recently adopted for rate-of-return carriers electing the voluntary path to the model, the Commission requires bidders in this baseline tier to offer over the course of the 10-year term a minimum usage allowance of 150 GB per month, or a usage allowance that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher, at a price that is reasonably comparable to similar offerings in urban areas. The Commission concludes that this standard will ensure that rural consumers will have available an offering that enables them to utilize their broadband connections in ways similar to consumers in urban areas, where fixed broadband services are widely available, while its reasonable comparability benchmarks will ensure that usage allowance is provided at a price that is reasonably comparable to service offerings with similar usage allowances in urban areas.

15. *Above-Baseline Performance Tier.* The Commission also recognizes that in some areas of the country, there may be bidders willing to deploy networks that will deliver performance that exceeds its baseline requirements for the Phase II auction. For a bid to qualify in this tier, the bidder must commit to deploying a network that is fully capable of offering speeds and usage allowances that exceed the baseline standards that the Commission establishes today for the Phase II auction to all locations. Consistent with proposals in the record, the Commission will accept bids from entities that propose to offer 100 Mbps downstream and 20 Mbps upstream throughout the 10-year term and require these bidders to offer an unlimited monthly usage allowance.

16. *Gigabit Performance Tier.* Finally, the Commission establishes a top performance tier for areas of the country in which there may be bidders willing to deploy networks that will deliver speeds that substantially exceed its baseline speed requirements for the Phase II auction. Specifically, the Commission will consider bids from entities that commit to offer 1 Gbps downstream and 500 Mbps upstream and an unlimited monthly usage allowance.

17. *Latency.* For each tier described above, bidders will designate one of two latency performance levels: (1) Low latency or (2) high latency. Providing flexibility for bidders to designate their latency performance level for each of the given performance tiers set out above will enable a broader range of providers to participate in the Phase II competitive bidding process.

18. Recently, the Commission adopted a minimum latency requirement that 95 percent or more of all peak period measurements of network round trip latency are at or below 100 milliseconds for rate-of-return carriers that elect the voluntary path to model support. That standard also applies to price cap carriers that accepted the Phase II offer of model-based support. The Commission requires bidders that wish to submit low-latency bids to meet the same 100 millisecond latency standard.

19. However, the Commission recognizes that some bidders may not be able to meet that latency standard. For example high-earth orbit satellite providers cannot meet the latency requirement, but may be willing to offer higher speeds. After full consideration of the record, the Commission now concludes that bidders designating high latency performance will be required to meet a two-part standard for the latency of both their voice and broadband service: (1) Requirement that 95 percent or more of all peak period measurements of network round trip latency are at or below 750 milliseconds, and (2) with respect to voice performance, the Commission requires high latency bidders to demonstrate a score of four or higher using the Mean Opinion Score (MOS), similar to the standard that the Commission adopted for one category of rural broadband experiments.

20. The Commission is not persuaded that it should eliminate altogether any millisecond measure of latency for Phase II support recipients. Some parties have urged the Commission to adopt alternative measures of service quality for recipients of Connect America Fund support, such as requiring voice service to be provided with an "R Factor" score at or above a minimum threshold value, and a Web page loading time standard. The Commission declines to adopt an alternative approach that would only use a voice quality test for providers that cannot meet the 100 ms latency standard. The Commission finds that the better approach is to measure latency the same way for all providers, but for entities submitting high latency bids to set a higher benchmark and require a demonstration of MOS of four or higher.

21. The Commission rejects arguments that a 100 ms latency designation should apply only to "latency-sensitive traffic." Low latency, that is, shorter delays, is essential for most network-based applications and critical for others, such as VoIP and other interactive and highly interactive applications. Thus, requiring objectively measured latency performance standards is in line with network-based applications requirements and consumer-based perceptions of acceptable performance, particularly for voice services.

22. At the same time, the Commission is willing to entertain bids from entities that can only provide high latency, in the interest of making this auction as competitive as possible. For those providers offering high latency services, the Commission emphasizes the importance of providing quality voice services. The Commission particularly welcomes solutions such as the terrestrial voice service suggested by ViaSat. While the Commission does not adopt the MOS scoring metric as a *substitute* for the milliseconds of latency requirement, it believes it can be used to help ensure quality voice service performance for bids designated high latency. Thus, as noted above, in addition to the metrics set forth above, the Commission requires that bidders that exhibit high latency must be prepared to demonstrate a MOS of four or higher throughout the term of support. The Commission recognizes

that the MOS metric is a measure of perceived quality, and requires entities taking advantage of this standard to be prepared to submit testing results that are specific to their CAF-funded areas. Recipients must provide this level of voice quality to all consumers in CAF-funded areas, not just to a subset of locations.

23. Bidders in the Phase II competitive bidding process that seek to meet the higher latency standard will be free to bid on all areas that are eligible for Phase II competitive bidding; the Commission will not limit them to bidding on census blocks that the cost model has determined are extremely high-cost. The Commission does not want to preclude the possibility, however, of consumers in these areas gaining access to low latency service in the years ahead. The Commission also would have concerns if consumers were widely dissatisfied with the quality of voice service associated with a double hop call. For that reason, the Commission reserves the option of including such areas in the auction that will occur shortly before the end of the six-year term of support for the price cap carriers that accept model-based support (*i.e.,* before the end of 2020), if subscription levels in CAF-funded areas are more than 35 percent lower than the national average at that time. The then-current recipient of support as well as other entities would be free to bid for support to meet whatever performance standards that will apply to that Phase III auction. Absent a decision by the Commission to include such areas in the Phase III auction, however, Phase II winning bidders that elect to provide high-latency service will receive support for a 10-year term.

24. The Commission concludes that applicants seeking to deploy spectrum-based technologies that can meet the performance requirements will be eligible to bid in any tier. To ensure that these bidders have the capabilities to meet all standards, however, the Commission will require bidders proposing to use spectrum-based technologies to demonstrate that they have the proper authorizations or licenses, if applicable, and access to spectrum, to reach the fixed locations within the areas for which they seek support.

25. The Commission does not agree with commenters who argue that setting performance standards that could potentially exclude certain technologies disserves the public interest because it conflicts with the principle of competitive neutrality. The principle of competitive neutrality does not preclude the Commission from meeting other reasonable regulatory objectives, including as discussed above, the statutory requirement to ensure reasonably comparable service. The adoption of these technology-neutral tiers of performance standards, which are designed to meet reasonable regulatory objectives, is not objectionable simply because some service providers cannot meet the standards for a particular tier.

26. By soliciting bidders that make commitments to meet significantly higher performance standards, the Commission furthers the goal of providing access to advanced telecommunications and information services in all regions of the nation. By also entertaining bids from providers meeting service tiers that the Commission has previously established in other contexts, it helps ensure that services in rural and high-cost areas are reasonably comparable to those services provided in urban areas at reasonably comparable rates, and that consumers in these areas will not be left behind. Finally, the Commission emphasizes that to the extent there are eligible areas where there are no bidders willing to meet the standards for any of these tiers of service, it intends to take further action to ensure that those consumers are not left behind. As discussed below, the Commission will proceed expeditiously to conduct a subsequent Remote Areas Fund auction with further relaxed standards.

B. Interim Deployment Obligations

27. *Discussion.* The Commission now adopts its proposal to set the same service milestones for recipients of Phase II support awarded through the competitive bidding process as those that apply to price cap carriers that accept a state-level commitment. The Commission requires deployment to be completed within six years of funding authorization. In particular, as shown in the chart below, the Commission requires the entities authorized to receive Phase II auction support to complete construction and commercially offer service to 40 percent of the requisite number of locations in a state by the end of the third year of funding authorization, an additional 20 percent in the subsequent years, with 100 percent by the end of the sixth year. The Commission recognizes these interim deployment milestones may not be appropriate for non-terrestrial providers or providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations. The Commission seeks further comment on this issue in the concurrently adopted Further Notice.

SERVICE MILESTONES FOR PHASE II SUPPORT RECIPIENTS AWARDED THROUGH COMPETITIVE BIDDING

	Percent
Year 1	**
Year 2	**
Year 3	40
Year 4	60
Year 5	80
Year 6	100

28. When the Commission adopted a 10-year term for Phase II support awarded through competitive bidding in April 2014, it did not intend to suggest that it also would provide those recipients 10 years to meet their build-out obligations. Rather, the Commission provided for a longer term in order to provide additional support to those who competed for such support. Given the importance of the availability of broadband in the 21st century, one of the Commission's policy goals is to accelerate the deployment of broadband-capable networks. Spreading the service milestones over the entire 10-year term would slow the availability of new broadband infrastructure in these high-cost areas. Most winning bidders will likely undertake projects that are smaller in scale than the state-wide commitments undertaken by price cap carriers and so should be able to complete construction and commercially offer service well before the end of the sixth year. Therefore, the Commission does not believe it necessary to grant additional flexibility at this time.

C. Flexibility in Meeting Deployment Obligations

29. *Discussion.* The Commission concludes that recipients of support through a competitive bidding process should similarly have some flexibility in their deployment obligations to address unforeseeable challenges to meeting those obligations. In adopting flexibility in deployment obligations for price cap carriers accepting model-based support, the Commission recognized that the "facts on the ground" when they are deploying facilities in a state may necessitate some flexibility regarding the number of locations. Similar issues may be faced by recipients of support awarded through a competitive process. Most commenters supported providing some flexibility in the number of required locations.

30. The Commission finds that requiring deployment to at least 95 percent of eligible locations is equally appropriate for recipients of Phase II support awarded through competitive

bidding. The Commission recognizes that for these Phase II recipients, as well as model-based support recipients, "there may be a variety of unforeseen factors, after the initial planning stage, that can cause significant changes as a network is actually being deployed in the field." The Commission therefore will require recipients of Phase II support awarded through competitive bidding to deploy to at least 95 percent of the funded locations in each state where they are receiving support. At the end of the support term, recipients that have deployed to at least 95 percent, but less than 100 percent, of the number of funded locations will be required to refund support based on the number of funded locations left unserved in that state. The amount refunded will not be based on average support, but on one-half the average support for the top five percent of the highest cost funded locations nationwide.

31. The Commission notes that, consistent with the approach it adopted for the price cap carriers, compliance with the deployment obligations will be determined at the state-level for recipients of support through the competitive bidding process. Thus, the Commission will not be looking at whether 95 percent of the eligible locations in a census block have service, nor will it be looking at whether 95 percent of the eligible locations in a given project within a state have service. Regardless of how a bidder chooses to place its bids for support, for administrative convenience, support will authorized on a state-level basis, and the geographic areas in a state that are funded will represent the service territory for the ETC that is awarded support through the competitive bidding process.

32. The Commission is not persuaded by commenters who argued it should provide more flexibility than it provided price cap carriers accepting model-based support. Unlike the price cap carriers who are required to accept or decline the offer of model-based support at the state level, bidders in the Phase II competitive bidding process will be able to bid on smaller projects. Potential bidders are responsible for undertaking the necessary due diligence in advance of bidding to identify particularly problematic census blocks when they are preparing their bids and have the option of not including such blocks in their bids. Therefore, the Commission see no reason to provide greater leniency in deployment obligations for recipients of support through the competitive bidding process.

33. Finally, the Commission remains open to the possibility of allowing Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks. In the *December 2014 Connect America Order,* 80 FR 4446, January 27, 2015, the Commission noted that all parties potentially interested in receiving Phase II support have an interest in building economically efficient networks, and those networks do not neatly align with census blocks. The Commission will continue to explore this issue, and encourage all stakeholders interested in receiving Phase II support to work together to propose for future Commission consideration an administratively feasible method for ensuring that unserved consumers in partially served census blocks are not left behind.

D. Accelerated Payment for Early Deployment

34. *Discussion.* After further considering the issue, the Commission declines to adopt an accelerated payment option for recipients of Phase II support awarded through the competitive bidding process. While a few commenters supported providing an option for accelerated payment, and the Commission agrees with the goal of encouraging faster deployment, it is not persuaded that it could implement this proposal within the annual available budget. The Commission is not convinced by ADTRAN's claim that the universal service fund should be no worse off, because the outlays will not increase, and could decrease slightly to the extent the Commission discounts the accelerated future payments to reflect the time value of money. Even if annual support amounts were discounted, ADTRAN fails to recognize the impact on the fund if a significant number of support recipients took advantage of an accelerated payment option in the same year. Although overall outlays over the 10-year term would not increase, if the Commission disburses an amount of Connect America funding that significantly exceeds its annual budget, it likely would have to increase the contribution factor and the burden on all ratepayers. In adopting the high-cost budget in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, the Commission explicitly sought to avoid "dramatic swings in the contribution factor." The Commission finds that the potential risk of considerably exceeding its budget in a single year outweighs the benefits of encouraging early deployment with an accelerated payment option. Moreover, continuing monthly payments over the full 10-year term provides the Commission with a means of addressing non-compliance by withholding payments until non-compliance is cured, as discussed below. The Commission notes that recipients will have other incentives to complete their deployment as quickly as possible, both to begin earning revenues from the new service offerings and to be in a position where they are no longer required to maintain a letter of credit, as discussed more fully below.

III. Eligible Areas

35. In this section, the Commission finalizes decisions regarding the areas that will be subject to bidding in the Phase II auction. As a general matter, only census blocks lacking 10/1 Mbps service from any provider will be eligible for bidding, with two limited exceptions. The Commission directs the Bureau to release a preliminary list of eligible census blocks based on the most recent FCC Form 477 data and to conduct a streamlined challenge process to identify the final list of eligible census blocks for the Phase II competitive bidding process. The Commission also directs the Bureau to average costs at the census block level when generating the list of census blocks eligible for the Phase II competitive bidding process.

36. One of the Commission's objectives is to ensure that as many consumers as possible lacking 4/1 Mbps Internet access service become served through implementation of Phase II. The Commission concludes it would not be an efficient use of the Phase II support to make eligible in the auction high-cost or extremely high-cost census blocks in the declined states where the price cap carrier already is providing 10/1 Mbps or better service.

A. Updating Census Block Eligibility To Reflect More Recent Broadband and Voice Coverage Data

37. *Discussion.* The coverage data used in the Phase II cost model for the offer of support to the price cap carriers reflects broadband coverage as it existed in June 2013, which now is nearly three years old. It would not be appropriate to place in the auction those areas that have become served through market forces in the intervening years. The Commission therefore concludes that the Commission will rely on current Form 477 voice and broadband deployment data to prepare a preliminary list of census blocks that will be eligible for the Phase II competitive bidding process. Certified Form 477 data that indicate an area is or is not served will supersede the conclusions reached in the Phase II

challenge process that the Bureau conducted for the offer of model-based support.

38. The Commission concludes that it will conduct a limited challenge process to ensure that support is not provided to overbuild areas where another provider already is providing voice and broadband service meeting the Commission's requirements. The Commission directs the Bureau to release a preliminary list of eligible census blocks based on June 2015 Form 477 data and to invite parties to comment within 21 days of publication if those areas have become served subsequent to the June 2015 Form 477 data collection with 10/1 Mbps or greater service, with a minimum usage allowance of 150 GBs at a rate meeting the Commission's reasonable comparability benchmark, with latency not exceeding 100 ms.

39. The Bureau is not required to entertain challenges from parties seeking to establish that a block reported as served on a certified FCC Form 477 as of June 2015 or later is unserved. The Phase II challenge process was very time-consuming and administratively burdensome for all involved. The Commission found that it was difficult for the incumbent provider to prove a negative—that a competitor is not serving an area, and it expects that incumbents would face similar problems with challenging Form 477 data that indicate that a competitor serves an area. The Commission also observes that no party was able to demonstrate high latency by competitors in the Phase II challenge process, and very few providers prevailed in a challenge exclusively focused on a competitor's usage/price.

40. The Commission has taken several steps that make the deployment data it collects through Form 477 data more reliable than the June 2013 SBI data that was utilized in version 4.3 of the CAM for purposes of the offer of Phase II support to price cap carriers. Unlike SBI data, the submission of Form 477 data is mandatory for filers, and filers must certify that the data are accurate, thereby promoting the submission of complete and accurate data. Thus, entities should be making timely, accurate, and complete Form 477 filings as required by the Commission's rules; to the extent providers fail to indicate they serve a particular census block in FCC Form 477, there is no basis for protest if the Commission then determines such an area is unserved for purposes of the Phase II auction. Moreover, whereas SBI data were collected using varied methodologies by the states, Form 477 data are collected through a single, uniform process, which reduces the potential for inconsistent data from one state to the next. And while the SBI data were collected in pre-defined speed tiers, Form 477 filers offering fixed broadband service are required to report their advertised maximum speed for each technology they offer in each census block and distinguish between residential and nonresidential broadband, thereby allowing the Commission to more precisely determine which speeds are available in each census block. Finally, the use of Form 477 data ensures consistency in the data used to determine the existence of voice and broadband in a given census block.

41. Given the improvements in the data collection, the Commission concludes that it would not serve the public interest to entertain challenges from parties seeking to contest the reported status of a block as served for purpose of the Phase II competitive bidding process. Conducting a more resource-intensive challenge process would likely delay the implementation of the Phase II competitive bidding process. The Commission notes that it held the Phase II challenge process in 2014, and a number of parties took advantage of that opportunity to correct the SBI data. The Commission concludes in this instance it will be sufficient to rely on the certified FCC Form 477 filings and solicit comment on updated coverage through a streamlined challenge process.

42. While the Commission concludes that eligibility of areas for support in the Phase II competitive bidding process will be determined at the census block level, this does not mean that the census block will be the minimum geographic unit for purposes of bidding in the Phase II auction. As discussed below in its discussion of auction design, the Commission expects the minimum biddable unit to be a census block group containing one or more eligible census blocks.

B. Averaging Costs at the Census Block Level

43. *Discussion.* The Commission now concludes that the CAM should no longer calculate costs at the sub-block level, except in very limited circumstances. This will simplify the administration and oversight of compliance with Phase II obligations for parties awarded support through the competitive process. The Commission therefore directs the Bureau to average costs at the census block level when generating the list of census blocks eligible for the Phase II competitive bidding process, except in the circumstance it describes below.

44. For purposes of ongoing monitoring and oversight by the Commission, the relevant state commission, and the Tribal government, where applicable, it now concludes that it is preferable to require a winning bidder to serve all of the locations in a given census block, rather than some subset of those locations in a given block that are served by a given node to the extent possible. As a practical matter, bidders (and ultimate awardees of funding) may not know which locations in a given block are "funded" and therefore must be served, and which are not "funded" and do not have to be served. Accordingly, to simplify this issue for all parties concerned, the Commission directs the Bureau to determine which census blocks are eligible by averaging costs at the census block level, to the extent possible, so that if a given census block is eligible for funding, the deployment obligation applies to all the locations in that census block.

45. For similar reasons, the Commission will not include in the Phase II auction those census blocks that are served by multiple price cap carriers and where at least one price cap carrier has accepted Phase II model-based support. It would be difficult for bidders to formulate a bid for a partial census block, as they would need to distinguish between locations that will be served by a price cap carrier that accepted Phase II model-based support and thus would be ineligible for Phase II auction support, and which locations will be served by price cap carriers that declined the support and thus would be eligible for Phase II auction support. Accordingly, for administrative simplicity, the Commission directs the Bureau not to include such census blocks in the list of census blocks that are eligible for the Phase II auction.

46. The Commission also takes this opportunity to clarify that extremely high-cost locations that are located in census blocks where the price cap carrier has accepted Phase II model-based support will not be eligible for Phase II auction support. In concluding that extremely high-cost areas would be eligible for bidding the Phase II auction, the Commission did not intend to make eligible extremely high-cost locations that are located within census blocks that are already receiving Phase II support. Rather, it intended to include in the auction those extremely high-cost census blocks that were not eligible for the Phase II offer of model-based support.

47. As discussed above, the Commission has encouraged stakeholders to propose an administratively feasible method for ensuring that unserved consumers in partially served census blocks are not left behind. The Commission is open to addressing these relatively few cases after it determines which areas remain unserved after the Phase II auction, and who the neighboring providers are.

C. Eligibility of Census Blocks Served by Price Cap Carriers Offering Broadband at 10/1 Mbps Speeds or Higher

48. *Discussion.* The Commission excludes census blocks that a price cap carrier already serves with speeds of at least 10/1 Mbps from the Phase II competitive bidding process. Given the Commission's finite budget and its objective of targeting support to areas that are unserved, the Commission finds that it furthers the public interest to exclude census blocks that are already served by price cap carriers at speeds that meet the Commission's current requirements. The Commission acknowledges that permitting competitive bidders to include such census blocks in their bids could encourage more providers to participate in the Phase II auction. But the Commission concludes on balance that to allow such entities to overbuild census blocks already served with broadband speeds of 10/1 Mbps would be an inefficient use of its finite budget. While the Commission recognizes that all locations in a census block may not be served by the price cap carrier with broadband at speeds of 10/1 Mbps, it prefers at this time to focus its finite budget on areas that lack *any* broadband provider that offers broadband at speeds that meet the Commission's requirements.

49. The Commission declines to permit price cap carriers in the declined territories to identify areas where they do not need support to be excluded from the Phase II competitive bidding process. Such a process likely would delay the implementation of the Phase II competitive bidding process and would unfairly place a decision of whether an area goes to auction in the hands of the carrier that declined the offer of model-based support. The Commission concludes that the public interest is better served by distributing Phase II auction support as soon as possible so that unserved communities are able to receive broadband as quickly as possible.

D. Finalizing the List of Eligible Census Blocks

50. Consistent with the foregoing decisions, and prior Commission decisions, the Commission directs the Bureau to take all necessary steps to determine the census blocks that will be eligible for the Phase II auction. In particular, the Bureau shall determine which census blocks are served by unsubsidized competitors according to certified Form 477 data and thus ineligible for the Phase II competitive bidding process. The Bureau also shall add to the list any census blocks to which price cap carriers accepting model-based support indicated by December 31, 2015 that they do not intend to deploy, and the census blocks included in non-winning rural broadband experiment bids submitted in category one by entities that met the Commission's financial and technical documentation submission requirements, to the extent FCC Form 477 data indicate that such blocks are unserved with 10/1 Mbps broadband. To ensure that potential bidders are aware of the potential areas in the auction, the Commission directs the Bureau to publish expeditiously a preliminary list of eligible census blocks using the June 2015 Form 477 data. The Commission invites parties to notify the Bureau within 21 days of publication of this preliminary list if any of the census blocks on the preliminary list became served after June 30, 2015. The Commission delegates to the Bureau the task of conducting this streamlined challenge process.

51. The Bureau may subsequently update that list to the extent any corrections are made to the June 2015 Form 477 data or to reflect more recent Form 477 data, if publicly available. To the extent rate-of-return carriers identify census blocks that they will be unable to serve before the list is finalized, they also will be included. The Bureau shall publish a final list of eligible census blocks based on publicly available Form 477 data no later than three months prior to the deadline for submission of short-form applications for the Phase II auction.

IV. Budget

52. *Discussion.* Now that the price cap carriers have responded to the offer of support, the Commission can establish the budget for the Phase II auction. Nearly $175 million in support was declined. To that figure, the Commission will add the nearly $35 million in support that was removed from the offer as described above. The Commission also adds the nearly $3 million associated with the served Missouri census blocks that was subtracted from the Phase II model-based support amount that CenturyLink accepted in Missouri. For simplicity, the Commission therefore now sets the Phase II auction budget at $215 million in annual support (rounding up the sum of nearly $175 million, nearly $35 million, and nearly $3 million).

V. Phase II Auction

A. Basic Guidance on Auction Process

53. *Discussion.* Here the Commission provides some basic guidance on choosing an auction design that will further its objectives for Connect America Phase II competitive bidding.

54. The Commission has already adopted competitive bidding rules that allow for the subsequent determination of specific final auction procedures based on additional public input during the pre-auction process. Those competitive bidding rules together with the additional rules the Commission adopts today to establish Phase II winning bidders' performance obligations, eligible areas, and post-auction obligations and oversight establish the framework needed for the Commission to develop detailed auction procedures in the pre-auction process, including specific procedures for ranking bids based on bidders' performance requirement commitments, auction format, package bidding to enable bidders to aggregate eligible areas, and reserve prices. The Commission's decisions today are intended to narrow the scope of issues so that interested parties can focus constructively on the remaining details, while preserving its ability to make adjustments if circumstances or the record developed in the pre-auction process support such changes to assure that the auction will take place in a timely manner and fulfill the goals it establishes in this Order.

55. *Ranking bids.* The Commission now adopts an auction design in which bidders committing to different performance levels will compete head to head in the auction, with weights to take into account its preference for higher speeds over lower speeds, higher usage over lower usage allowances, and low latency over high latency. A number of commenters support a framework that provides an absolute preference to bidders deploying future proof networks, while other commenters disagree. After consideration of the record, the Commission is not persuaded that one type of bid should be processed separately from another type, or that one type of bid should

automatically be selected over another, regardless of the bid amount. Rather, all bids will be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards. The Commission concludes that the bids for entities committing to meet significantly higher speeds and/or usage than the baseline should be adjusted because it sees the value to consumers in rural markets of having access to service during the 10-year term of support that significantly exceeds the Commission's baseline requirements. Likewise, the Commission sees value to rural consumers of having access to speeds and usage that meet its baseline requirements, rather than the minimum. The Commission would prefer, to the extent possible, to ensure that consumers living in high-cost areas receive the level of universal service that it establishes as its baseline expectation. The Commission also would prefer consumers having access to low latency services over high latency services. The Commission also notes that when structuring the Phase II auction, it will keep in mind the Commission's objective of bringing service to as many consumers lacking 4/1 Mbps Internet access service as possible through the implementation of Phase II. The Commission seeks comment on the assignment and specific level of the weights in the concurrently adopted Further Notice.

56. Bids will be scored relative to the reserve price for the areas subject to the bid with lower bids selected first, taking into accounts the weights, on which the Commission seeks comment in the concurrently adopted Further Notice. The Commission concludes that this approach is more likely to ensure winning bidders across a wide range of states than selecting bids based on the dollar per location, which could result in support disproportionately flowing to those states where the cost to serve per location is, relatively speaking, lower than other states. The Commission declines to adopt an approach that would select bids on a dollar per location basis.

57. *Appropriate Phase II Funding Across States.* The Commission recognizes the concerns that have been raised by states about the need for an efficient and equitable allocation of Phase II funds, particularly for those states in which a substantial amount of the offer of Phase II support was declined. That an incumbent carriers declined the offer of support does not diminish its universal service obligation to connect consumers in areas that would have been reached had the offer been accepted and to provide sufficient universal service funds to do so. Accordingly, one of the Commission's objectives is to address these concerns. The Commission seeks comment on how best to design the Phase II auction in the concurrently adopted Further Notice. In addition, the Commission recognizes and applauds state-based initiatives to advance broadband deployment. In the concurrently adopted Further Notice, the Commission also seeks comment on how best to coordinate with such initiatives to achieve its universal service goals.

58. *Tribal lands.* The Commission recognizes its historic relationship with federally recognized Tribal Nations, has a longstanding policy of promoting Tribal self-sufficiency and economic development, and has developed a record of helping ensure that Tribal Nations and their members obtain access to communications services. Telecommunications deployment on Tribal lands has historically been poor due to the distinct challenges in bringing connectivity to these areas. The Commission has observed that communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population, and that greater financial support therefore may be needed in order to ensure the availability of broadband on Tribal lands. Accordingly, the Commission seeks to adopt mechanisms to advance broadband deployment on Tribal lands. The Commission seeks comment in the concurrently adopted Further Notice on measures that it could take in the Phase II auction to further that objective.

59. *Auction format for collecting bids.* The record is mixed on whether to conduct a single or multi-round bid auction. USTelecom, WISPA, and UTC propose a multiple-round format, while ACA urges a single-round sealed bid auction. The Commission prefers a multi-round auction format for the Phase II auction, but it has not settled on the specific details of such an auction format. The Commission notes that when adopting the rules for the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions in the *USF/ICC Transformation Order,* the Commission observed that the question of whether to conduct multiple rounds of bidding is typically resolved in the auction procedures process. Similarly, here, the specific auction design details will be adopted in a future *Auction Procedures Public Notice,* after the opportunity for further comment. Based on the information currently available to the Commission, the Commission expects that a multiple-round bid auction would enable bidders, better than a single-round bid auction, to make adjustments in their bidding strategies to facilitate a viable aggregation of geographic areas in which to construct networks and enable competition to drive down support amounts.

60. *Minimum geographic area for bidding.* The Commission expects that the minimum geographic area for bidding will be a census block group containing one or more eligible census blocks, although it reserves the right to select census tracts when it finalizes the auction design if necessary to limit the number of discrete biddable units. The Commission concludes that defining bidding units based on census-determined areas is preferable to an approach that is grounded in the network topology of a particular type of service provider. The Commission concludes generally that it is desirable to ensure that all interested bidders, including small entities, have flexibility to design a network that matches their business model and the technologies they intend to use. The Commission is not persuaded that adopting a larger geographic unit, such as a county, would be the appropriate minimum unit for purposes of bidding. Such an approach could preclude entities that intend to construct a smaller network or that intend to bid to expand their existing networks. The Commission also expects that as the size of the minimum geographic unit increases, the more challenges providers may face in putting together a bidding strategy that aligns with their intended network construction or expansion.

61. *Reserve prices.* The Commission will use the CAM to set reserve prices for the Phase II auction. The reserve price for a minimum biddable unit will be no greater than the CAM-calculated support amount for that area, with a cap in the amount of support per location provided to extremely high cost census blocks. The record supports the Commission's proposal to utilize the CAM to establish reserve prices, although some commenters suggest that the reserve price should be higher. For example, ITTA argues that the reserve price should be set based on a model-derived amount plus an additional percentage because the cost of deploying is likely to be more where the price cap carrier did not elect the statewide commitment. The Commission's experience with the rural broadband experiments, however, indicates that there are providers willing to deploy broadband for support amounts less than the model-based

amount. As with the auction design, the specific reserve prices will be adopted in a future *Auction Procedures Public Notice,* after the opportunity for further comment.

B. Application Process

62. *Discussion.* Consistent with the Commission's approach in Mobility Fund Phase I and Tribal Mobility Fund Phase I, the Commission adopts a two-stage application filing process for participants in the Phase II competitive bidding process. Specifically, in the pre-auction "short-form" application, a potential bidder will need to establish its eligibility to participate, providing, among other things, basic ownership information and certifying to its qualifications to receive support. After the auction, the Commission would conduct a more extensive review of the winning bidders' qualifications to receive support through "long-form" applications. Such an approach balances the need to collect essential information with administrative efficiency, and will provide the Commission with assurance that interested entities are qualified to meet the terms and conditions of the Phase II competitive bidding process if awarded support. The Commission notes that each potential bidder has the sole responsibility to perform its due diligence research and analysis before proceeding to participate in the Phase II auction.

63. Once the long-form application has been approved, a public notice will be released announcing that the winning bidder is ready to be authorized. At that time, the winning bidder will be required to submit, within a specified number of days, at least one letter of credit and an opinion letter from counsel that meets the Commission's requirements as described below. After those documents are approved, a public notice will be released authorizing the winning bidder to begin receiving Phase II auction support.

64. Below, the Commission discusses the requirements it adopts for the short-form and the long-form applications for the Phase II competitive bidding process. Consistent with the approach the Commission took for the rural broadband experiments last year, it directs the Wireline Competition Bureau and the Wireless Telecommunications Bureau (Bureaus) to adopt the format and deadlines for the submission of documentation for the short-form and long-form applications, that are consistent with the Commission's universal service competitive bidding rules and Part 54 of the Commission's rules.

1. Short-Form Application Process

65. *Discussion.* The Commission requires all applicants for the Phase II competitive bidding process to provide basic information in their short-form applications that will enable the Commission to review each application to assess before an entity commits time and resources to participating in the auction whether the applicant is eligible to participate in the auction. In addition to making the financial and technical certification adopted in the *April 2014 Connect America Order,* 79 FR 39164, July 9, 2014, the Commission's universal service competitive bidding rules will apply so that applicants will be required to provide information that will establish their identity, including disclosing parties with ownership interests and any agreements the applicant may have relating to the support to be sought through the Phase II competitive bidding process.

66. The Commission will also require all applicants to indicate the type of bids that they plan to make and describe the technology or technologies that will be used to provide service for each bid. Applicants will also be required to submit with their short-form applications any information or documentation required to establish their eligibility for any bidding weights or preferences that the Commission ultimately adopts. To the extent that an applicant plans to use spectrum to offer its voice and broadband services, it must disclose whether it currently holds licenses for or leases spectrum. The applicant must demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and meet the minimum performance requirements to serve all of the fixed locations in eligible areas. Moreover, all applicants will be required to certify that they will retain their access to the spectrum for at least 10 years from the date of the funding authorization.

67. The Commission does not expect that these requirements will impose an unreasonable burden on potential bidders. The Commission had similar requirements for bidders in the rural broadband experiments, and it is not aware of any applicants having difficulty providing such baseline information. The Commission anticipates that as they prepare to participate in the auction, applicants will already have firm plans for where they will bid and the technologies they will use to provide service to the areas for which they will bid. Unlike the applicants participating in the Mobility Fund auctions, participants will likely be proposing to use a wide variety of technologies to provide service meeting the Commission's requirements. Because not all participants will have ETC designations to provide service in their relevant service areas, it will be useful for the Commission to have some insight into the types of technologies that bidders intend to use to meet their obligations prior to the auction. The project descriptions are intended to provide the Commission with some assurance that the applicant has thought through how it intends to provision service if awarded support.

68. To provide additional assurance to the Commission that the entities that intend to bid in the auction have some experience operating networks or are otherwise financially qualified, it adopts several alternative prequalification requirements. First, the Commission adopts a requirement that applicants certify in their short-form application that they have provided voice, broadband, and/or electric distribution or transmission services for at least two years and specify the number of years they have been operating, or they are the wholly-owned subsidiary of an entity that meets these requirements. Applicants that have provided voice or broadband services must also certify that they have filed FCC Form 477s as required during that time period. Recognizing the electric utilities also have significant experience building and operating networks, the Commission also will accept certifications from entities that have provided electric distribution or transmission services for at least two years (or their wholly-owned subsidiaries). Applicants that have operated only an electric distribution or transmission network must submit qualified operating or financial reports for the relevant time period that they have filed with the relevant financial institution along with a certification that the submission is a true and accurate copy of the forms that were submitted to the relevant financial institution. The Commission will accept the Rural Utilities Service (RUS) Form 7, Financial and Operating Report Electric Distribution; the RUS Form 12, Financial and Operating Report Electric Power Supply; the National Rural Utilities Cooperative Finance Corporation (CFC) Form 7, Financial and Statistical Report; the CFC Form 12, Operating Report; or the CoBank Form 7; or the functional replacement of one

of these reports. The Commission concludes that if an entity can certify that it has provided voice, broadband, and/or electric distribution or transmission services for at least two years or that it is a wholly-owned subsidiary of such an entity, that will provide the Commission with sufficient assurance before the auction that an entity has at a minimum level demonstrated that it has the ability to build and maintain a network.

69. Entities that meet the foregoing requirements will also submit audited financial statements from the prior fiscal year, including balance sheets, net income and cash flow, that have been audited by an independent certified public accountant with their short-form application. The Commission is not persuaded that it should permit applicants to submit reviewed financial statements in lieu of audited financial statements. While the Commission acknowledges that it collects in the section 54.313 annual report reviewed financial statements from privately held rate-of-return ETCs that are not RUS borrowers and are not audited in the normal course of business, the Commission concludes that the better approach for the Phase II auction is to require a financial audit. A financial review is a less fulsome review of an entity's financial health because it does not generally require the auditor to develop a detailed understanding of the internal controls environment and conduct more in-depth testing of individual transactions posted to the general ledger. The need to ensure that every Phase II auction recipient is in good financial health is critical. Authorized Phase II recipients will be required to take on obligations with defined timelines, so it is important that the Commission has insight into an entity's financial health to assess its ability to meet such obligations if awarded support. The Commission concludes that the additional cost of obtaining audited financial statements is outweighed by the importance of assuring the financial health of Phase II auction recipients.

70. However, the Commission concludes that to the extent an entity that otherwise meets these eligibility requirements does not already obtain an audit of its financial statements in the ordinary course of business, the Commission will permit that entity to wait until after it is announced as a winning bidder to submit audited financial statements. The Commission will require such entities that do not already have audited financial statements to certify that they will submit the prior fiscal year's audited financial statements by the deadline during the long-form application process. The Commission acknowledges that some potential bidders, particularly small entities, may be reluctant to bid in the Phase II auction because they do not want to pay the upfront costs of obtaining audited financial statements prior to finding out if they are winning bidders. Because such entities will be required to demonstrate that they have provided a voice, broadband, or electric distribution or transmission service for two years, the Commission concludes that this will give it reasonable assurance of an entity's financial health for permitting that entity to participate in the auction. The Commission concludes that on balance, its interest in maximizing participation in the Phase II auction outweighs the potential risk of qualifying an experienced entity to participate in the Phase II auction without reviewing that bidder's audited financial statements, particularly given that it will have the opportunity to scrutinize the bidder's audited financial statements at the long-form application stage before authorizing that entity to begin receiving support.

71. The Commission requires winning bidders that take advantage of this option to submit their audited financials no later than the deadline for submitting their proof of ETC designation (which is within 180 days of public notice announcing winning bidders). The Commission concludes that requiring winning bidders to submit their audited financials within the same timeframe as the ETC designations will help prevent unreasonable delays in authorizing Phase II auction support so that winning bidders can begin deploying broadband to unserved consumers. The Commission expects that bidders will take steps to prepare for an audit once they have submitted their short-form application so that they can immediately start the process upon being named a winning bidder. If the audit process takes longer than 180 days, winning bidders will have the option of seeking a waiver of this deadline. In considering such waiver requests, the Commission directs the Bureau to determine whether an entity demonstrated in its waiver petition that it took steps to prepare for an audit prior to being named a winning bidder and that it took immediate steps to obtain an audit after being announced as a winning bidder.

72. The Commission concludes that it is appropriate to adopt a base forfeiture of $50,000 for any entity that certifies in its short-form application that it will submit audited financials in its long-form application, but then ultimately defaults by failing to submit audited financial statements as required. Such forfeiture would also be subject to adjustment upward or downward as appropriate based on the criteria set forth in the Commission's forfeiture guidelines. The Commission finds that imposing such a forfeiture will create an incentive for bidders to certify truthfully in their short-form applications that they will obtain audited financial statements if announced as a winning bidder and will also create an incentive for winning bidders to actually go out and obtain those audited financial statements rather than default.

73. The Commission is not persuaded that it should adopt the alternative proposals suggested by ACA and WISPA including (1) requiring entities that are not audited in the ordinary course of business to make an upfront payment or deposit of $25,000 or (2) imposing a maximum forfeiture of $25,000 if an entity does not submit its audited financial statements as required. First, the Commission concludes that managing and tracking escrow arrangements would be too administratively burdensome and could potentially delay the auction. Second, the Commission finds that imposing a $25,000 upfront payment or maximum forfeiture would permit an entity to conduct a cost-benefit analysis that could encourage gaming. For example, an entity may decide it would be willing to pay $25,000 if it could preclude others from being winning bidders in certain areas and then default, or an entity may decide it is willing to pay $25,000 to default if it is ultimately unhappy with its winning bid. Instead, the Commission concludes that adopting a $50,000 base forfeiture rather than a maximum forfeiture will make it more difficult for an entity to perform such a strict cost-benefit analysis because the forfeiture may be increased if it is determined that such gaming has taken place. According to some commenters, the costs of a financial statement audit can vary and generally start at $25,000. The Commission finds that adopting a base forfeiture of $50,000 rather than $25,000 will further reduce the incentives for gaming. The Commission also concludes a base forfeiture of $50,000 is large enough to create an incentive for bidders take their obligation to get audited financial statements seriously given that it will be relying upon the winning bidders' certifications in the short-form application in permitting those bidders to participate in the Phase II auction.

74. Recognizing that the foregoing requirements would preclude from participating in the Phase II auction

entities that have less than two years of experience operating a voice, broadband and/or electric distribution or transmission network, the Commission adopts an alternative pathway for those entities to be deemed qualified to bid in the auction. If an interested bidder cannot make the above certification that it has filed FCC Form 477 data as a voice or broadband provider for the previous two years or the identified alternative operating or financial forms for electric distribution or transmission providers, it may instead submit (1) audited financial statements for that entity from the three most recent consecutive fiscal years, including balance sheets, net income, and cash flow, and (2) a letter of interest from a qualified bank with terms acceptable to the Commission that the bank would provide a letter of credit to the bidder if the bidder were selected for bids of a certain dollar magnitude.

75. For the latter group of potential bidders, the Commission concludes that its interest in having a level of insight into the financial health of a potential Phase II auction bidder over a longer period of time is a necessary prequalification to bid, particularly because this subset of bidders will not able to demonstrate that they have operated and maintained a voice, broadband and/or electric distribution or transmission network for at least two years.

76. The Commission also expects that a letter of interest from the bank will provide the Commission with an independent basis for some additional assurance regarding the financial status of the entity. The Commission does not anticipate that this requirement will be onerous. The Commission expects that interested bidders will already be considering which banks they will use to meet the letter of credit requirement described below, and that they will have to find a bank that will be willing to issue them a letter of credit in order to ultimately be authorized to begin receiving support. But the Commission cautions potential bidders that it will carefully scrutinize such letters and reserve the right not to allow such applicants to bid if the letter of interest is too vague to assess the likelihood of a future bank commitment.

77. The Commission recognizes that by adopting these requirements, it is potentially precluding interested bidders that have not been in operation long enough to meet these requirements or that are unable to meet these requirements for other reasons. By adopting alternative types of prequalification requirements, the Commission will implement a more narrowly tailored approach that balances maximizing participation in the auction with furthering the statutory principles of providing access to advanced services to all regions in the county and ensuring that those living in rural, insular and high-cost areas have access to reasonably comparable services. As stewards of the public's funding, it is the Commission's responsibility to implement safeguards to ensure that these funds are being used efficiently and effectively, and to protect consumers in rural and high-cost areas against being stranded without a service provider in the event a winning bidder defaults when another qualified competing bidder could have won the support instead.

78. Finally, the Commission will also require interested bidders to identify in their short-form applications if they have already been designated as ETCs in the areas they intend to bid. Consistent with the Commission's decision to permit bidders to wait until they have been announced as winning bidders to obtain their ETC designation, interested bidders will also be required to certify in their short-form applications that they acknowledge they must be designated as an ETC for the areas in which they will receive Phase II support before they are authorized to begin receiving such support.

2. Post-Auction Long-Form Application Process

79. *Discussion.* Building on lessons learned from Mobility Fund Phase I, Tribal Mobility Fund Phase I, and the rural broadband experiments, the Commission now adopts a number of requirements for the long-form and post-auction review process that will apply generally to recipients of Phase II and Remote Areas Fund support.

a. Financial and Technical Requirements

80. Like the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions, the Commission will require that winning bidders submit a self-certification regarding their financial and technical qualifications with their long-form applications. They must also submit a certification that specifies that they will be able to meet all of the applicable public interest obligations for the relevant tiers, including the requirement that they offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas. Due to the varying types of technologies that entities may use to fulfill their Phase II competitive bidding process obligations, the Commission finds that it is also reasonable to require winning bidders to submit a description of the technology and system design they intend to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements. There must be sufficient capacity to meet customer demand at or above the prescribed levels during peak usage periods. Entities proposing to use wireless technologies also must provide a description of their spectrum access in the areas for which they seek support and demonstrate that they have the required licenses to use that spectrum if applicable. This documentation will enable Commission staff to have assurance from a licensed engineer that the proposed network will be able to fulfill the service obligations to which the bidders will have to commit. The Commission reminds potential applicants that filing deadlines will be strictly enforced, and that bidders should not presume that they may obtain a waiver absent extraordinary circumstances.

81. The Commission notes that it required provisionally selected bidders in the rural broadband experiments to submit similar technical documentation, and the vast majority of provisionally selected bidders in the rural broadband experiments were able to meet these requirements. Similarly, the Commission is aware that RUS requires loan applicants to submit detailed network information as part of its application process. The Commission expects that potential bidders for the Phase II competitive bidding process will need to have already developed a network plan when making a decision about whether to participate in the auction. Accordingly, on balance the Commission concludes that its interest in assessing, before an entity is authorized to receive support, whether that entity is likely able to fulfill Phase II obligations outweighs any potential burdens this requirement may impose on bidders.

82. Similar to the requirements for Mobility Fund Phase I and Tribal Mobility Fund Phase I, the Commission will require that winning bidders certify that they have available funds for all project costs that will exceed the amount of support that will be received from the Phase II auction authorization for the first two years of their support

term and that they will comply with program requirements, including service milestones. The Commission anticipates that many bidders will need to obtain a loan or rely upon other sources of funding to cover the cost of building the network, with the ongoing support used to repay those construction loans. It therefore is imperative that winning bidders have a well-developed plan regarding financing for construction upon which they are ready to execute once the auction closes. Unlike Mobility Fund Phase I, where one time support was disbursed in conjunction with meeting deployment milestones, Phase II support will be provided over a 10-year period. Therefore, the Commission will also require that winning bidders describe in their long-form application how the required construction will be funded and include financial projections that demonstrate that they can cover the necessary debt service payments over the life of the loan. The Commission also expects that prior to issuing a letter of credit, an issuing bank will be performing its own financial review of the winning bidder, which will provide an added assurance that it is financially qualified. And, as noted above, prior to funding authorization, winning bidders that are not required to submit audited financial statements in the short-form application will be required to submit the prior fiscal year's financial statements that have been audited by an independent certified public accountant.

83. Finally, as discussed more fully below, in the Phase II competitive bidding process, participants will be subject to a defined forfeiture if they fail to meet within defined time periods the Commission's requirements to be authorized to receive support. The Commission expects that subjecting bidders to such a forfeiture payment if they are unable to get a letter of credit or meet the Commission's other requirements will underscore the requirement that bidders must do their own due diligence about their financial capability to meet their obligations before they participate in the Phase II competitive bidding process.

b. Letters of Credit

84. *Discussion.* The Commission adopts a letter of credit requirement for all winning bidders. In the long-form application filing, it will require each winning bidder to submit a letter from a bank as described below committing to issue a letter of credit. The winning bidder will be required to have its letter of credit in place before it is authorized to receive support. The Commission's decision to require recipients to obtain a letter of credit is consistent with the requirements the Commission has adopted for other competitive bidding processes it has conducted to distribute Connect America funds, where both existing providers and new entrants were required to obtain letters of credit. In response to what the Commission learned in the rural broadband experiments, however, it makes some adjustments to these requirements in an effort to reduce some of the cost associated with obtaining a letter of credit.

85. In the *USF/ICC Transformation Order* and in the *Rural Broadband Experiments Order,* 79 FR 45705, August 6, 2014, the Commission explained why letters of credit are an effective means for accomplishing its role as stewards of the public's funds by securing the Commission's financial commitment to provide Connect America support in the auction context. The Commission also explained why it did not adopt other approaches suggested in the record, such as relying on its existing accountability measures or adopting alternative methods of securing Connect America funds, for example performance or construction bonds, field inspections, or denials of certification. The Commission concludes that the same rationale applies here. Letters of credit permit the Commission to immediately reclaim support that has been provided in the event the recipient is not furthering the objectives of universal service by complying with the Commission's rules or requirements. They also have the added advantage of minimizing the possibility that the support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish the Commission's goals. The Commission finds that commenters that have renewed requests for alternatives based on their experience with the rural broadband experiments, such as requiring a performance bond, placing money in escrow, or submitting financial statements in lieu of a letter of credit or considering an entity's history of receiving high-cost support or performance, have not demonstrated that their suggested alternatives offer the same level of protection of ratepayers' contributions to the universal service fund.

86. Additionally, the Commission reminds bidders to become familiar with the letter of credit requirements it adopts below and consider potential issuing banks in a timely fashion. To the extent that a bidder is the recipient of a loan or grant from RUS, it should consult with RUS regarding the need to obtain a letter of credit if it is authorized to receive support *before* it submits a short-form application. The Commission notes that RUS' regulations generally require that recipients of RUS support obtain a first lien on the assets that are secured by certain broadband and telecommunications loan programs. If a bank determines that it will need a first lien on an entity's assets as collateral for issuing a letter of credit, RUS and that bank will need to negotiate acceptable arrangements, such as an intercreditor agreement with that bank to share RUS' first lien status. RUS has set forth a number of standards that an intercreditor agreement will have to meet including having the bank impose specific obligations on the Phase II auction recipient, in order for RUS to sign on to an intercreditor agreement. To the extent required, it is in the best interest of entities to contact RUS and become familiar with those standards as soon as possible. In the event that the bidder's chosen issuing bank requires a first lien to issue a letter of credit, the bidder should ensure that it can comply with the additional obligations and that the issuing bank will be able to agree to those terms by the time the bidder will be required to submit a letter of credit commitment letter as described below.

87. *Requirements for Letters of Credit.* Once the Commission has conducted its post-auction financial and technical review, it will require winning bidders to secure an irrevocable stand-by letter of credit before support will be authorized for disbursement. For each state which they are awarded support, winning bidders must submit a letter of credit or multiple letters of credit that cover all of the bids in that state. The letter of credit must be issued in substantially the same form as set forth in the model letter of credit provided in Appendix B of this Order, by a bank that is acceptable to the Commission, as described in more detail below. If an entity fails to meet the required service milestones after it begins receiving support, then fails to cure within the requisite time period, and is unable to repay the support that is associated with its default in a timely manner, the Bureau will issue a letter evidencing the failure and declaring a default.

88. In response to concerns raised about the cost of maintaining a letter of credit for the entire support period, the Commission will require that the letter of credit only remain open until the recipient has certified that it has deployed broadband and voice service meeting the Commission's requirements to 100 percent of the required number of locations, and USAC has validated

that the entity has fully deployed its network. The Commission concludes that such an approach will help alleviate the costs of obtaining a letter of credit, particularly for entities that are able to build out their networks faster than the six year build-out period, while still protecting the Commission's ability to recover the funds in the event that the entity is not building out its network as required. This approach is consistent with the approach used for Mobility Fund Phase I and Tribal Mobility Fund Phase I, where an entity is required to maintain a letter of credit valued at the support that had been disbursed until the Commission verifies that the build-out has been completed.

89. The Commission does not adopt the proposals that would reduce the amount of the letter of credit to cover only the support that is disbursed for the first two years unless an entity fails to meet the first service milestone or that would cover only the support that is disbursed in the coming year. Both of these approaches would not permit the Commission to recover a significant portion of the public's funds that are disbursed to an entity in the event that the entity is not using the support for its intended purposes. The Commission recognizes that some entities may continue to operate partially-built networks even in the event of a default. However, as described below, the Commission will only authorize USAC to draw on the letter of credit for the entire amount of the letter of credit if the entity does not repay the Commission for the support associated with its compliance gap. If the entity fails to pay this support amount, the Commission concludes that the risk that the entity will be unable to continue to serve its customers or may go into bankruptcy is more likely, and thus it is necessary to ensure that the Commission can recover the entire amount of support that it has disbursed.

90. *Letter of Credit Opinion Letter.* Consistent with the Commission's requirements for Mobility Fund Phase I, Tribal Mobility Fund Phase I, and the rural broadband experiments, winning bidders must also submit with their letter(s) of credit an opinion letter from legal counsel. That opinion letter must clearly state, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the account party's bankruptcy estate, or the bankruptcy estate of any other Phase II competitive bidding process recipient-related entity requesting issuance of the letter of credit under section 541 of the Bankruptcy Code.

91. *Issuing Bank Eligibility.* The letters of credit for winning bidders must be obtained from a domestic or foreign bank meeting the requirements adopted herein. The record suggests that entities, especially small entities, lack established relationships with banks that met the requirements the Commission adopted for the rural broadband experiments, which can make it costly for such entities to obtain a letter of credit. Moreover, some entities may intend to bid on smaller projects, and larger banks that met the Commission's requirements for the rural broadband experiments may be unwilling to issue letters of credit below a certain threshold. Because these obstacles are also faced by rural broadband experiment participants and could potentially constrain participation in the Remote Areas Fund, the Commission concludes that it serves the public interest to expand the pool of banks that are eligible to issue letters of credit for all recipients of support authorized through competitive bidding to serve fixed locations, while maintaining objective criteria that will provide sufficient assurance that letters of credit issued by such banks will be honored.

92. Specifically, the Commission requires generally that, for U.S. banks, the bank must be insured by the Federal Deposit Insurance Corporation (FDIC) and have a Weiss bank safety rating of B- or higher. This will expand the number of eligible U.S. banks from fewer than 70 banks to approximately 3,600 banks. Whereas banks that intend to participate in the commercial markets obtain credit ratings, Weiss rates all banks that report sufficient data for Weiss to analyze. Importantly, Weiss is a subscription service and is not compensated by the banks that it rates. Weiss offers an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability indexes. By requiring that the banks have a rating of at least B-, the Commission ensures that the bank has a rating that at a minimum demonstrates that the bank "offers good financial security and has the resources to deal with a variety of adverse economic conditions." And by requiring that U.S. issuing banks also be FDIC-insured, the Commission has the added benefit of relying on the oversight of the FDIC and its protections. The Commission concludes that this approach achieves an appropriate balance between encouraging the participation in the auction, particularly of small entities, and protecting the public funds. The Commission expands the eligibility of banks to lower barriers to participation in the auction for entities that may not otherwise be able to obtain a letter of credit from a smaller pool of banks, while also ensuring that it puts in place adequate controls to protect the Fund by adopting alternative eligibility criteria that give the Commission independent assurance of the safety and the soundness of the bank issuing a letter of credit.

93. In lieu of obtaining a letter of credit from a U.S. bank that meets these requirements, the Commission will also permit entities to obtain letters of credit from CoBank or the National Rural Utilities Cooperative Finance Corporation (CFC) as long as these two entities retain assets that place them among the top 100 U.S. banks, and they maintain a credit rating of BBB- or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency). These entities are not traditional banks in that they do not accept deposits from members of the public. Thus, these entities do not have a Weiss bank safety rating and are not FDIC-insured. However, the Commission finds that CFC and CoBank can be considered banks in the context of the Commission's program because they use their capital resources to make loans.

94. CoBank has met the more stringent issuing bank eligibility requirements for the Mobility Fund and rural broadband experiments, and has issued a number of letters of credit for these programs. Although CoBank is not FDIC-insured, it is insured by the Farm Credit System Insurance Corporation, which the Commission found provides protections that are equivalent to those indicated by holding FDIC-insured deposits. As long as CoBank retains its standing with assets equivalent to a top 100 U.S. bank and a qualified credit rating, the Commission sees no reason to exclude CoBank from eligibility simply because it is not rated by Weiss.

95. CFC's assets also make it comparable to commercial depository banks that are in the top 100 based on total assets and it has a credit rating from Standard & Poor's of A. But because CFC is not a depository institution and it is not part of the Farm Credit System, it is not FDIC or FCSIC-insured. Nevertheless, the Commission concludes that CFC is uniquely situated and should be made eligible to the extent it retains its standing with assets equivalent to a top 100 U.S. bank and a qualified credit rating. CFC is "owned by, and exclusively serves" rural utility providers, and CFC manages and funds

its affiliate, the Rural Telephone Finance Cooperative (RTFC), which lends primarily to telecommunications providers and affiliates across the nation. As the largest non-governmental lender for rural utilities, CFC has specialized institutional knowledge regarding the types of entities that the Commission expects will participate in universal service competitive bidding to serve fixed locations and has demonstrated that it has significant and long-term experience in financing the deployment of rural networks. A number of entities that participated in the rural broadband experiments and entities that have expressed interest in participating future competitive bidding have indicated that they have an established relationship with CFC. This unique and longstanding role in rural network deployment coupled with CFC's significant participation in other rural federal government programs, its substantial assets, and its sustained credit rating, provides the Commission with sufficient assurance that CFC has the qualifications to assess the financial health of potential bidders and honor the letters of credit that it issues at the request of these bidders, without the need for the independent oversight of CFC's safety and soundness that would be offered by FDIC or FCSIC insurance or a Weiss safety rating. The Commission concludes that based on the totality of these circumstances, CFC is eligible to issue letters of credit despite the fact that it does not meet the FDIC and Weiss rating requirements. The Commission notes that it is not adopting alternative eligibility requirements that would permit banks that are not FDIC or FCSIC-insured or that do not have a Weiss bank safety rating to issue letters of credit. Instead the Commission is concluding that, for purposes of providing security for winning bidders, a letter of credit from CFC provides assurances that are equivalent to those provided by banks meeting the Commission's general criteria, due to CFC's uniquely extensive experience in financing rural networks, its significant participation in other federal government programs, and its long-standing relationship with a class of potential auction bidders.

96. For non-U.S. banks, the Commission retains the same eligibility requirements that it adopted for the rural broadband experiments. Accordingly, for non-U.S. banks, the Commission requires that the bank be among the 100 largest non-U.S. banks in the world (determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit, determined on a U.S. dollar equivalent basis as of such date). The bank must also have a branch in the District of Columbia or other agreed-upon location in the United States, have a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's, and must issue the letter of credit payable in United States dollars.

97. The Commission is not persuaded that it should further expand the bank eligibility requirements to include all banks that are federally-insured. If the Commission were to permit entities to use any bank that is federally-insured, it would need to conduct a comprehensive review of every bank to determine whether it has adequate safety and soundness. Because the Commission lacks the expertise to conduct such a review and it would delay the authorization of winning bidders, it concludes that expanding the number of eligible U.S. banks to banks that are FDIC-insured and have a Weiss bank safety rating of B- or higher addresses the concerns of small entities while also using an objective and administratively feasible method to judge the financial security of a bank. The Commission also finds that relying on an independent evaluation of the safety and soundness of a bank that uses a rating based on a number of financial indices provides a more comprehensive view of a bank's financial viability than other proposals submitted in the record that would rely solely on the size of the bank or its capitalization.

98. The Commission notes that winning bidders have flexibility in how they structure their letter of credit arrangements with issuing banks and may choose to obtain multiple letters of credit over the build-out period. Entities may negotiate all the terms of their letter of credit with the issuing bank, including the length of the letter of credit, so long as the letter of credit is available to USAC for the entire duration of the build-out period and it is at a minimum an annual letter of credit that follows the terms and conditions of the Commission's model letter of credit. If a recipient has been issued a letter of credit from a bank that expires during the build-out period, that recipient must notify USAC immediately and an approved replacement letter of credit must be put in place before the letter of credit expires. If a bank fails so that it is no longer able to honor a letter of credit or if the bank no longer meets the eligibility requirements the Commission adopts herein, the recipient must notify USAC and will have 30 days to secure a letter of credit from another issuing bank that meets the Commission's eligibility requirements. The Commission also reserves the right to temporarily cease disbursements of monthly support until a recipient submits to the Commission a new letter of credit that meets its requirements and note that winning bidders will be subject to non-compliance measures if they fail to obtain a new and acceptable letter of credit.

99. *Letter of Credit Commitment Letter.* As the Commission required for the Mobility Fund Phase I, Tribal Mobility Fund Phase I, and the rural broadband experiments, winning bidders will be required to submit a letter from an acceptable bank committing to issue an irrevocable stand-by letter of credit, in the required form, to that entity as part of the long-form process. The commitment letter will at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit, found in Appendix B.

100. *Value of Letter of Credit.* When a winning bidder first obtains a letter of credit, it must be at least equal to the first year of authorized support. Before the winning bidder can receive its next year's support, it must modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year. The Commission concludes that requiring recipients to obtain a letter of credit on at least an annual basis will help minimize administrative costs for USAC and the recipient rather than having to negotiate a new letter of credit for each disbursement.

101. Recognizing that the risk of a default will lessen as a recipient makes progress towards building its network, the Commission finds that it is appropriate to modestly reduce the value of the letter of credit in an effort to reduce the cost of maintaining a letter of credit as the recipient meets certain service milestones. Specifically, once an entity meets the 60 percent service milestone that entity may obtain a new letter of credit or renew its existing letter of credit so that it is valued at 90 percent of the total support amount already disbursed plus the amount that will be disbursed the next year. Once the entity meets the 80 percent service milestone that entity may obtain a new letter of credit valued at 80 percent of the total support amount already

disbursed plus the amount that will be disbursed the next year. The Commission concludes that the benefit to recipients of potentially decreasing the cost of the letter of credit as it becomes less likely that a recipient will default outweighs the potential risk that if a recipient does default and is unable to cure, the Commission will be unable to recover a modest amount of support.

102. The Commission is not persuaded, however, that it should further reduce the value of the letter of credit so that it only covers 50 percent of the total of support disbursed throughout the build-out period. The Commission concludes that the approach it adopts is better calibrated to the potential risk of default because it takes into account the substantial performance of the recipient. While the Commission acknowledges that reducing the value of the letter of credit to 50 percent of the amount of support disbursed would further reduce the costs for some recipients, it finds that on balance accomplishing the Commission's duty as stewards of the public's funds by ensuring that it can recover a substantial percentage of the support the Commission disburses in the event that an entity is not using the support for its intended use outweighs the potential costs for participants.

103. *Applicability to All Winning Bidders.* The Commission is not persuaded that it should exempt existing ETCs that already receive high-cost support from the letter of credit requirement. As the Commission concluded in the *Rural Broadband Experiments Order,* requiring all entities to obtain a letter of credit is a necessary measure to ensure that it can recover support from any recipient that cannot meet the build-out obligations for the Phase II competitive bidding process. Compliance with existing universal service rules does not necessarily guarantee that an entity is financially qualified to undertake the obligations of the Phase II competitive bidding process. Moreover, requiring all winning bidders to obtain a letter of credit ensures that all bidders are subject to the same default process if they do not meet the required service milestones.

104. *Costs of Letters of Credit.* The Commission continues to believe that the advantages of letters of credit in ensuring that Connect America support can be quickly reclaimed to protect ratepayers' contribution to the universal service fund, and that the support is protected from being included in a bankruptcy estate, outweigh the potential costs of obtaining letter of credit. While the Commission understands that the requirement will impose costs on participants, it expects that all entities will factor the cost of letters of credit into their bids. Moreover, the Commission anticipates that its decision to tailor the requirement so that the letter of credit will remain open for only the build-out period and modestly reduce the value of the letter of credit as the recipient meets certain service milestones will lessen the cost of maintaining a letter of credit. The Commission also expects that by expanding the pool of eligible issuing U.S. banks to approximately 3,600 and also permitting entities to obtain a letter of credit from CFC, a bank that has an established relationship with a number of small entities, will potentially further reduce the costs of obtaining a letter of credit.

105. *Tribal Nations and Tribally-Owned Applicants.* For the same reasons the Commission articulated in the *Rural Broadband Experiments Order,* the Commission recognizes there may be a need for greater flexibility regarding letters of credit for Tribally-owned and -controlled winning bidders. Thus, if any Tribal Nation or Tribally-owned and -controlled applicant for the Phase II competitive bidding process is unable to obtain a letter of credit, it may file a petition for a waiver of the letter of credit requirement. Waiver applicants must show, with evidence acceptable to the Commission, that the Tribal Nation is unable to obtain a letter of credit because of limitations on the ability to collateralize its real estate, that Phase II support will be used for its intended purposes, and that the funding will be used in the best interests of the Tribal Nation and will not be wasted. Tribal applicants could establish this showing by providing, for example, a clean audit, a business plan including firm financials with projections of how construction will be funded, provision of financial and accounting data for review (under protective order, if requested), or other means to assure the Commission that the winning project is a viable project.

c. ETC Designation Documentation

106. Consistent with the Commission's decision to require winning bidders to obtain ETC designation from the relevant states or the Commission as applicable, as discussed more fully below the Commission will also require entities to submit appropriate documentation in their long-form application of their ETC designation in all areas for which they will receive support within 180 days of being announced as a winning bidder. In addition to submitting the relevant state or Commission orders, each winning bidder should provide documentation showing that the designated areas (*e.g.*, census blocks, wire centers, etc.) cover its winning bid areas so that it is clear that the applicant has ETC status in each winning bid area. For example, the obligation may be satisfied by providing maps of the recipient's ETC designation area, map overlays of the winning bid areas, or charts listing designated areas. Additionally, the Commission will require winning bidders to submit a letter with their documentation from an officer of the company certifying that their ETC designation for each state covers the relevant areas where the winning bidders will receive support. These requirements will help the Commission verify that each winning selected bidder is authorized to operate in the areas where it will be receiving support. The Commission does not anticipate that this requirement will impose an unreasonable burden on winning bidders given that it expects they will conduct their own due diligence review to ensure that their existing or new ETC designations cover their awarded areas.

3. Forfeiture

107. *Discussion.* The Commission concludes that any entity that files a short-form application to participate in the Phase II competitive bidding process will be subject to a forfeiture in the event of a default before it is authorized to begin receiving support. The Commission will impose a forfeiture in lieu of a default payment. Specifically, the Commission concludes that a base forfeiture per violation of $3,000, subject to adjustment based on the criteria set forth in the Commission's forfeiture guidelines, is appropriate in these circumstances given that the failure to supply the required information will prevent the Bureau from assessing a winning bidder's qualifications. A $3,000 base forfeiture amount is equivalent to the base forfeiture that is imposed for failing to file required forms or information with the Commission. While, as the Commission explains below, not all defaults will relate to the failure to submit the required forms or information, it concludes that for administrative simplicity and to provide bidders with certainty as to the base forfeiture that will apply for all pre-authorization defaults, it is reasonable to subject all bidders to the same $3,000 base forfeiture per violation.

108. An entity will be considered in default and will be subject to forfeiture if it fails to timely file a long-form

application or meet the document submission deadlines outlined above or is found ineligible or unqualified to receive Phase II support by the Bureaus on delegated authority, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support. The Commission notes that a winning bidder will be subject to the base forfeiture for each separate violation of the Commission's rules. For purposes of the Phase II competitive bidding process, the Commission defines a violation as any form of default with respect to the minimum geographic unit eligible for bidding. In other words, there shall be separate violations for each geographic unit subject to a bid. That will ensure that each violation has a relationship to the number of consumers affected by the default, but is not unduly punitive. Such an approach will also ensure that the total forfeiture for a default is generally proportionate to the overall scope of the winning bidder's bid. To ensure that the amount of the base forfeiture is not disproportionate to the amount of an entity's bid, the Commission also limits the total base forfeiture to five percent of the bidder's total bid amount for the support term. For the Mobility Fund and Tribal Mobility Fund, the Bureaus found that five percent of the total bid amount provided sufficient incentive for auction participants to fully inform themselves of the obligations associated with participation in the auctions without being unduly punitive.

109. The Commission finds that by adopting such a forfeiture, it will impress upon recipients the importance of being prepared to meet all of the Commission's requirements for the post-selection review process and emphasize the requirement that they conduct a due diligence review to ensure that they are qualified to participate in the Phase II competitive bidding process and meet its terms and conditions.

VI. ETC Designation

110. In this section, the Commission adopts more specific details related to the implementation of the ETC designation requirement for the Phase II competitive bidding process. First, the Commission requires winning bidders in the Phase II competitive bidding process to submit proof of their ETC designation within 180 days of the public notice announcing them as winning bidders. Second, the Commission concludes that forbearance from the section 214(e)(5) service area conformance requirement for recipients of the Phase II competitive bidding process is appropriate and in the public interest.

A. ETC Designation Timing

111. *Discussion.* As noted above, the Commission will require winning bidders for the Phase II competitive bidding process to submit proof of their ETC designation as part of the long-form application process. Such proof must be submitted within 180 days of the public notice announcing them as winning bidders. Failure to obtain ETC status and submit the required documentation by the deadline is an event of default.

112. In the rural broadband experiments, the Commission learned that while states have diligently pursued resolution of the ETC designation applications filed by rural broadband experiment provisionally selected bidders, a number of states were unable to make a final decision on an ETC designation within a 90-day timeframe, often due to state-specific procedural requirements or because the application was contested. Of the 18 provisionally selected bidders that have been authorized or are still undergoing post-selection review, only nine were able to submit documentation of their ETC designations for all of their proposed service areas within the 90-day timeframe, and several of these entities had existing ETC designations that already covered their proposed service areas. The Commission therefore concludes that it would not be appropriate to adopt a rebuttable presumption that a state commission lacks jurisdiction over a potential recipient of support merely because the state has failed to complete an ETC proceeding within 90 days of initiating such a proceeding.

113. The Commission notes that only a limited number of provisionally selected bidders were selected for the rural broadband experiments. In the Phase II competitive bidding process, there may be situations where there are multiple winning bidders in each state that do not already have an ETC designation, and the Commission expects that states will need to have more time to address multiple petitions. On balance, the Commission concludes that 180 days should provide states with enough time to consider ETC designation applications, without unreasonably delaying the authorization of Phase II support and commencement of broadband deployment to consumers lacking service.

114. In the event the bidder is unable to obtain the necessary ETC designations within 180 days, the Commission finds that it would be appropriate to waive the 180-day timeframe if the bidder is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete. A waiver of the 180-day deadline would be appropriate if, for example, an entity has an ETC application pending with a state and the state's next scheduled meeting at which it would consider the ETC application will occur after the 180-day window. This is consistent with the general approach the Commission took in the rural broadband experiments.

115. The Commission declines to adopt a hard rule requiring a winning bidder to file an ETC application within a specified amount of time to be considered acting in good faith, because, as it found in the rural broadband experiments, there were various circumstances impacting the ability of individual bidders to file their ETC applications. The Commission expects that winning bidders will have an incentive to file their ETC applications expeditiously so that they can meet the requirements to begin receiving support as soon as possible. Instead, based on what the Commission observed in the rural broadband experiments, when considering waivers of the 180-day timeframe for obtaining ETC designation, the Commission will presume that an entity will have acted in good faith if the entity files its ETC application within 30 days of the release of the public notice announcing that it is a winning bidder.

116. The Commission is not persuaded that it needs to take the further step of adopting a rebuttable presumption that a state lacks jurisdiction in the event that the ETC does not act on a petition within a certain amount of time or does not make a final decision on a petition within a certain amount of time. A number of state commenters explained that they need varying amounts of time to handle ETC petitions based on their available resources, the complexity of the application, and whether it is contested. The Commission has found through its experience with the rural broadband experiments that while some states may need more time to initiate action and make a decision on applications, they are committed to acting diligently within the framework of their existing state processes to act on ETC requests to expand voice and broadband-capable networks to their residents. The Commission saw no situations in the rural broadband experiments where a state refused to initiate action on a petition, took an unreasonable amount of time to declare that it did not have jurisdiction over a particular carrier, or

delayed making a decision on an application for no legitimate reason. And the Commission notes that any circumstances where a state will need more time due to procedural requirements or resource issues can be dealt with through the waiver process outlined above. Accordingly, to preserve the primary role that Congress gave the states in designating ETCs, the Commission reaffirms that it will act on an ETC designation petition pursuant to section 214(e)(6) "only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction."

117. Due to the Commission's experience with the rural broadband experiments, the Commission also continues to conclude that there is nothing in the record before the Commission concerning the designation of ETCs that would warrant changing the existing framework by adopting rules requiring states to streamline their review of ETC petitions, or adopting a rebuttable presumption that states do not have jurisdiction over certain types of providers for purposes of the Phase II competitive bidding process. The rural broadband experiments have shown the Commission that obtaining an ETC designation from a state commission generally has not been too burdensome for most entities. Instead, most of the wide variety of entities that submitted bids and were provisionally selected did not face unreasonable delays in obtaining ETC designations. The Commission notes that a number of states acted on ETC applications that were submitted by WISPs, and only two states concluded that they lacked jurisdiction over particular providers, two that are WISPs that would provide VoIP service and one that is an electric company. Accordingly, the Commission is not persuaded that it should disturb the statutory construction giving states primary jurisdiction in designating ETCs. The Commission also notes that requiring that all entities seek ETC designation from the relevant states first rather than going straight to the Commission will ensure that all participants in the Phase II competitive bidding process must follow the same procedural requirements for submitting an application to obtain an ETC designation.

118. The Commission also declines to automatically grant petitions after they have been pending with the states for a certain amount of time. Determining whether an entity is qualified to become an ETC is a fact-intensive inquiry, and the more complex and contested petitions are likely to take more time. It would be adverse to the public interest to forgo this inquiry into an entity's qualifications simply because an application is taking more time to review.

B. Forbearance From Service Area Redefinition Process

119. *Discussion.* The Commission now concludes that forbearance from the section 214(e)(5) service area conformance requirement for recipients of the Phase II competitive bidding process is appropriate and in the public interest. As the Commission discusses in more detail below, the Commission has decided that it is a more efficient use of Connect America support to provide support to only one provider in a given geographic area in exchange for that provider's commitment to offer service that meets the Commission's requirements throughout the funded area. If the rural telephone affiliate of a price cap carrier declines the offer of support and another entity is selected as the winning bidder to serve a portion of its area through the competitive bidding process, the incumbent will be replaced by the Phase II competitive bidding recipient in those areas, and the incumbent's legacy service area will no longer be a relevant consideration in determining where the winning bidder should be designated as an ETC.

120. Accordingly, for those entities that obtain ETC designations as a result of being selected as winning bidders for the Phase II competitive bidding process, the Commission forbears from applying section 214(e)(5) of the Act and section 54.207(b) of its rules, insofar as those sections require that the service area of such an ETC conform to the service area of any rural telephone company serving an area eligible for Phase II support. The Commission notes that forbearing from the service area conformance requirement eliminates the need for redefinition of any rural telephone company service areas in the context of the Phase II competitive bidding process. However, if an existing ETC seeks support through the Phase II competitive bidding process for areas within its existing service area, this forbearance will not have any impact on the ETC's pre-existing obligations with respect to other support mechanisms and the existing service area.

121. The Commission concludes that forbearance is warranted in these limited circumstances. As the Commission noted above, its objective is to distribute support to winning bidders as soon as possible so that they can begin the process of deploying new broadband to consumers in those areas. Case-by-case forbearance would likely delay its post-selection review of entities once they are announced as winning bidders. The Act requires the Commission to forbear from applying any requirement of the Act or its regulations to a telecommunications carrier if the Commission determines that: (1) Enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest. The Commission concludes each of these statutory criteria is met for winning bidders of the Phase II competitive bidding process.

122. *Just and Reasonable.* The Commission concludes that compliance with the service area conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is not necessary to ensure that the charges, practices, and classifications of carriers designated as ETCs in areas for which support is authorized through the Phase II competitive bidding process are just and reasonable and not unjustly or unreasonably discriminatory. As discussed below, the Commission finds that the three factors traditionally taken into account by the Commission and the states when reviewing a potential redefinition of a rural service area pursuant to section 214(e)(5) of the Act no longer apply in the context of designating ETCs in areas for which support is authorized through a Phase II competitive bidding process. Moreover, all ETCs—whether rural ETCs or other entities designated as ETCs in areas eligible for Phase II competitive bidding support in order to receive such support—will continue to be subject to the requirements of the Act and of the Commission's rules that consumers have access to reasonably comparable services at reasonably comparable rates. In fact, as the Commission discusses below, the expansion of voice and broadband-capable networks into these unserved Phase II areas may expand the choice of telecommunications services for consumers living in areas located near the Phase II funded areas. The resulting competition is likely to help ensure just, reasonable, and nondiscriminatory offerings of services.

For these reasons, the Commission finds that the first prong of section 10(a) is met.

123. *Consumer Protection.* The Commission also concludes that it is not necessary to apply the service area conformance requirement to a winning bidder in the Phase II competitive bidding process to protect consumers. Forbearance from the service area conformance requirement in these limited circumstances will not harm consumers currently served by the rural telephone companies in the relevant service areas. To the contrary, these consumers will benefit because an entity that replaces the incumbent rural telephone company as the only ETC receiving support to serve the area will be required to use its Phase II competitive bidding process support to expand voice and broadband-capable networks with service quality that meets the Commission's requirements. Moreover, Phase II recipients, like all ETCs, will be required to certify that they will satisfy applicable consumer protection and service quality standards in their service areas. For these reasons, the Commission finds that the second prong of section 10(a) is met.

124. *Public Interest.* The Commission concludes that it is in the public interest to forbear from the service area conformance requirement in these limited circumstances. As the Commission explained above, by deciding to distribute Phase II support through a competitive bidding mechanism and eliminating the identical support rule, the Commission has set up a system under which only one ETC will receive support to serve Phase II eligible areas. In circumstances where the incumbent declines the offer and does not win support (either because it does not bid, or is outbid by another provider), the Commission has decided that the competitive winner will replace the incumbent as the only provider that will be required to provide supported services in that area in exchange for receiving support. The Commission notes that if the incumbent price cap carrier chooses not to bid or loses in the competitive bidding process and is replaced by the Phase II auction winning bidder, it will no longer have the federal ETC obligation to provide voice service in that area and it can apply for permission to discontinue its provision of voice service through the section 214(a) discontinuance process, and relinquish its ETC designation for those areas pursuant to section 214(e)(4). Thus, a rural telephone carrier's service area is no longer a relevant consideration in determining where a Phase II competitive bidding process recipient should be designated as an ETC.

125. Accordingly, the analysis that the relevant state and the Commission historically undertook when deciding whether to redefine a rural telephone carrier's service area is not applicable to the Phase II competitive bidding process. Past concerns that an ETC serving only a relatively low cost portion of a rural carrier's service area might cream skim by receiving per line support based on the rural carrier's cost of serving the entire area are not relevant to Phase II support, which will be awarded through a competitive process. The incumbent rural telephone company will no longer be receiving support to serve the area won by another entity, the Phase II recipient's support will be based on the amount it bids to serve the area, and the Phase II recipient will be required to use its support to serve areas that the marketplace will not serve absent those subsidies. Because the service area redefinition analysis is not relevant to Phase II, it no longer serves the public interest for the states and the Commission to work together to define the service area of Phase II recipients serving rural telephone companies' service areas. The Commission notes that the actions it takes today do not otherwise impact the state's primary role in designating ETCs.

126. Similarly, the concerns about protecting rural carriers and avoiding the imposition of additional administrative burden on such carriers that led to the adoption of the service area conformance requirement nearly two decades ago are not applicable in these limited circumstances. First, the Commission notes that the affected incumbent rural telephone companies are affiliated with price cap holding companies, which typically serve both rural and urban areas. Second, each incumbent rural telephone company will not be automatically replaced by a competitive provider. Each price cap carrier holding company had the opportunity to accept model-based support and be the sole Connect America-supported provider throughout its territory. The price cap carrier holding company will also have the opportunity to compete so that Connect America support is provided to the most efficient provider. Only if the price cap carrier holding company chooses not to participate in the Phase II competitive bidding process or loses to a competitive carrier will it be replaced by a competitive provider as the sole recipient of Connect America support. Finally, the Commission notes that its decision to grant forbearance in these limited circumstances does not impose any additional administrative requirements on rural telephone companies.

127. The Commission also notes that requiring each Phase II recipient to conform its service areas to those of the rural telephone companies in the states they seek to serve could result in lengthy redefinition proceedings, which may delay the Commission's post-selection review of winning bidders and consequently delay its distribution of support and the deployment of advanced voice and broadband-capable networks. Some rural broadband experiment provisionally selected bidders found that it was time-consuming to obtain ETC designations in circumstances where the incumbent rural telephone company challenged their ETC petitions. The Commission expects that the forbearance it provides here will help accelerate the ETC designation process when applications are challenged because the state commission will not need to seek the Commission's agreement through a service redefinition process or wait 90 days for the service redefinition to be automatically granted if the Commission is unable to act within 90 days.

128. Finally, the Commission concludes that the forbearance in these limited circumstances will not harm competitive market conditions. If anything, forbearance may enhance competition by introducing new service providers to the market. Price cap carriers that have an existing network and customers in the areas won by another entity may choose to continue to operate in those areas, albeit without subsidies. And as the Phase II recipient is building a network in its funded areas, it may also find that it has a business case to build its network and provide service to customers in surrounding areas, thereby increasing competition and providing more options for consumers.

VII. Accountability and Oversight

129. In this section the Commission adopts measures for ensuring that recipients of Connect America support to serve fixed locations awarded through a competitive bidding process use their support for its intended purposes. First, the Commission adopts reporting requirements that will enable the Commission to monitor recipients' progress in meeting their deployment obligations. Second, the Commission explains how the letter of credit requirement it adopts above will work with the existing support reduction framework it adopted in the *December 2014 Connect America Order* to

calibrate support reductions to the extent of a recipient's non-compliance with its build-out obligations. Finally, the Commission clarifies that for the section 54.314 certification, the relevant states or ETCs may certify that support was used for its intended purpose for a given year if it is set aside in an account dedicated specifically for upgrades necessary to meet the relevant requirements.

A. Monitoring Progress in Meeting Deployment Obligations

130. *Discussion.* The Commission concludes that the public interest will be served by adopting reporting requirements for recipients of support to serve fixed locations awarded through a competitive bidding process comparable to that adopted for price cap carriers accepting model-based support and rate-of-return carriers. These reporting obligations will enhance the Commission's ability to monitor the use of Connect America support and ensure that it is being used for its intended purposes. Specifically, the Commission requires such recipients of support to submit annually the number and list of the geocoded locations to which they are offering broadband meeting the requisite requirements with Connect America support in the prior 12-month period. Because the Commission anticipates that recipients will use a variety of technologies and it would be useful to understand what types of networks ETCs are deploying so that it can monitor the use of Connect America support, it also requires that the list specify the types of technology (*e.g.,* fixed wireless, fiber) that is being used to offer service to each location.

131. The first location list will be due by the last business day of the second calendar month following the one-year anniversary of support authorization and must reflect the number and list of geocoded locations (if any) where the recipient already was offering service meeting the Commission's requirements and all new locations (if any) where the recipient was offering service meeting the requisite requirements by the end of the first year. Phase II auction recipients will then be required to submit a list of locations where they are newly offering service by the last business day of the second calendar month following each subsequent support year until they have met the final service milestone. Phase II auction recipients will be free—and indeed, encouraged—to submit information on a rolling basis throughout the year to the online portal, as soon as service is offered, so as to avoid filing all of their locations at the deadline. A best practice would be to submit the information no later than 30 days after service is initially offered to locations in satisfaction of deployment obligations, to avoid any potential issues with submitting large amounts of information at year end.

132. The Commission will also require that Phase II auction recipients file certifications that they have met their interim service milestones and are meeting the requisite public interest obligations by the last business day of the second calendar month following each relevant service milestone. As noted above, if an entity is able to build out its network more quickly to offer service and close-out its letter of credit before the final build-out deadline, it may notify the Commission at any time that it has met its final service milestone, and submit its final build-out certification and location list at that time. This notification will trigger USAC's verification that the build-out has been completed.

133. The Commission finds that collecting this information from recipients of support to serve fixed locations awarded through the competitive bidding process serves the public interest for the same reasons as collecting this information from price cap carriers and rate-of-return carriers accepting model-based support. As recommended by the Government Accountability Office, the Commission and USAC will analyze the data and determine how Connect America support is being used to "improve broadband availability, service quality, and capacity." As the Commission has already decided, these data will also be made publicly available at a granular level and in a user friendly manner. The Commission finds that the benefits in collecting this information outweigh any potential burdens on the recipients in reporting these data, given that the Commission expects that recipients will be already collecting such data for their own business purposes, to certify that they have met service milestones, and to be prepared to respond to compliance reviews that it directs USAC to undertake. These auction recipients that fail to file their location lists and build-out certifications by the required deadline will be subject to the support reduction scheme in section 54.316(c) of the Commission's rules.

134. The Commission will also require these auction support recipients to certify each year after they have met their final service milestone that the network they operated in the prior year meets the Commission's performance requirements. Phase II auction recipients will continue to receive support after they have met their service milestones. This requirement will ensure that the Commission is able to monitor that Phase II auction recipients are continuing to use their Phase II auction support for its intended use, and they are continuing to offer service meeting the relevant minimum requirements. Because at this point in their support terms, Phase II auction recipients will no longer be filing their build-out certifications and locations lists, the Commission concludes that it is reasonable to collect this certification in recipients' annual section 54.313 reports due July 1st that Phase II auction recipients will already be filing each year.

135. The Commission concludes that the benefit to the Commission in being able to track the progress of Phase II recipients and monitor their use of the public's funds outweighs the potential costs that will be imposed on recipients. The Commission expects that Phase II auction recipients will already be tracking their progress and their expenses before they have to meet their first service milestone and then monitoring their network's performance after their build-out is completed to meet the terms and conditions of Phase II auction support. Accordingly, the Commission does not anticipate that these additional reporting requirements will impose unreasonable costs on recipients.

136. The Commission will also require recipients of Phase II competitive bidding support to identify the total amount of Phase II support, if any, that they used for capital expenditures in the previous calendar year. The Commission will collect this information in recipients' annual section 54.313 reports, recognizing that recipients will be required to file annual reports throughout their support term. As the Commission concluded in the *December 2014 Connect America Order,* the benefit to the Commission of being able to determine how recipients are using Phase II funding outweigh any potential burden on those recipients in submitting this information given that it expects they will track their capital expenditures for Phase II in the regular course of business. Such information also may help the Commission determine whether alternative approaches are necessary to maintain universal service at the conclusion of the term of Phase II support. The Commission notes that all Phase II auction recipients should begin filing their section 54.313 annual reports starting the year after they begin receiving support. If they have not begun to offer service and have no

customers at this time, they will be able to indicate this in the report.

137. Finally, the Commission will require that in each section 54.313 annual report that is filed by Phase II recipients during their support term, they will be required to certify that they have available funds for all project costs that will exceed the amount of support that will be received from the authorization stemming from the Phase II auction for the next calendar year. This will give the Commission assurance that Phase II recipients have obtained enough funding to meet their Phase II obligations and also underscore Phase II recipients' obligation to conduct a due diligence review of their finances to ensure that they can meet their obligations.

138. The Commission provides as an example, an illustrative chart of the reporting requirements for a bidder in the baseline performance tier that begins to receive support in September 1, 2017 and takes the entire six years to build-out its network:

Support term year	Reporting obligations and deadlines
Year One: Sept. 1, 2017 to Aug. 31, 2018.	*Due by July 1, 2018:* FCC Form 481, including capex spent if any (reporting on 2017) and available funds certification (pertaining to 2019). *Due by Oct. 31, 2018:* First location list indicating locations where service meeting the Commission's requirements at time of authorization is already offered and locations where service newly offered in the first support year.
Year Two: Sept. 1, 2018 to Aug. 31, 2019.	*Due by July 1, 2019:* FCC Form 481, including capex spent (reporting on 2018) and available funds certification (pertaining to 2020). *Due by Oct. 31, 2019:* List of locations where service newly offered in second support year.
Year Three: Sept. 1, 2019 to Aug. 31, 2020.	*Due by July 1, 2020:* FCC Form 481, including capex spent (reporting on 2019) and available funds certification (pertaining to 2021). *Due by Oct. 30, 2020:* List of locations where service newly offered in third support year; 40% build-out certification.
Year Four: Sept. 1, 2020 to Aug. 31, 2021.	*Due by July 1, 2021:* FCC Form 481, including capex spent (reporting on 2020) and available funds certification (pertaining to 2022). *Due by Oct. 30, 2021:* List of locations where service newly offered in fourth support year; 60% build-out certification.
Year Five: Sept. 1, 2021 to Aug. 31, 2022.	*Due by July 1, 2022:* FCC Form 481, including capex spent (reporting on 2021) and available funds certification (pertaining to 2023). *Due by Oct. 31, 2022:* List of locations where service newly offered in fifth support year; 80% build-out certification.
Year Six: Sept. 1, 2022 to Aug. 31, 2023.	*Due by July 1, 2023:* FCC Form 481, including capex spent (reporting on 2022) and available funds certification (pertaining to 2024). *Due by Oct. 31, 2023:* List of locations where service newly offered in sixth support year; 100% build-out certification.
All Subsequent Years	*Due by following July 1:* FCC Form 481, including capex spent and service performance requirement certification (reporting on the previous calendar year) and available funds certification (pertaining to next calendar year; not required in annual report due the July 1st after the support term has ended).

139. The Commission directs USAC to review, for these entities that are authorized to receive support after the Phase II competitive bidding process, compliance with deployment obligations and the Commission's public interest obligations at the state level—that is, whether the carrier is meeting interim and final service obligations for the total number of locations required for each state. As the Commission concluded in the *December 2014 Connect America Order,* conducting compliance reviews at the state level would be less administratively burdensome for the Commission, USAC, and recipients of Phase II support than at the census block level.

140. Finally, the Commission clarifies that price cap carriers that choose to use Phase II model-based support to deploy to locations in extremely high-cost census blocks may not use Phase II model-based support to serve extremely high-cost census blocks that an authorized Phase II auction recipient will be required to serve. In the *USF/ICC Transformation Order,* the Commission gave price cap carriers the flexibility to use Phase II model-based support to serve census blocks that are above the extremely high-cost threshold to meet their commitment to serve a set number of locations. When the Commission provided this flexibility to meet deployment obligations, it did not contemplate funding two different carriers to deploy broadband to the same extremely high cost location. Permitting price cap carriers to use model-based support to deploy to such extremely high-cost census blocks would be inconsistent with the Commission's objective for Phase II of targeting support in the most efficient and effective manner. Accordingly, once a Phase II winning bidder has been authorized to begin receiving Phase II support to serve an extremely high-cost census block, a price cap carrier will not be able to count locations that are located in that census block towards its remaining Phase II model-based support service milestones.

141. The Commission directs USAC to review the geocoded locations lists that are submitted by the price cap carriers regarding deployment to verify that no extremely high-cost locations are located in census blocks where a Phase II auction recipient has been authorized to begin receiving support. In other words, as of the date of authorization for another entity to serve a census block, that census block is no longer eligible for substitution of locations. If USAC determines that a price cap carrier has included such locations in its list to count towards its build-out obligation, that price cap carrier will be deemed to have not met the relevant Phase II model-based support build-out obligation and will be subject to the applicable non-compliance measures.

142. As ETCs comply with the new public interest and reporting requirements and broadband public interest obligations in this Order, the Commission will continue to monitor their behavior and performance. Based on that experience, the Commission may make additional modifications as necessary to its reporting requirements.

B. Section 54.314 Certifications

143. *Discussion.* The Commission clarifies that for the section 54.314 certification, using high-cost support (*i.e.* Connect America Fund support) for

the intended purpose in a given calendar year may include setting aside the high-cost support received but not spent in that calendar year in an account dedicated specifically for upgrades necessary to meet the relevant high-cost requirements. All high-cost recipients should be prepared to demonstrate to a state making such a certification on their behalf, or to the Commission or USAC upon request, that any unspent high-cost support was kept in such an account until it was spent.

144. The Commission previously has recognized that the first task for any major network upgrade is to complete an overall plan and then undertake detailed engineering analyses in the field to plan the construction of particular routes. Depending on the timing of funding authorization for recipients of high-cost support, it is possible that in the initial year of support, an ETC may not be able to spend the funding that is disbursed. Moreover, with any network upgrade, construction over the course of the deployment timetable will be dependent on the availability of necessary equipment, fiber, and construction crews. In some cases, weather may require construction projects to be deferred over the winter into the following spring. The Commission also has acknowledged that a price cap carrier may not deploy new facilities in every state in every year of the Phase II term. Accordingly, the Commission concludes that it is permissible for high-cost recipients to certify or have the relevant states certify on their behalf that they have used their support for its intended purpose if they have set aside a portion or all of the high-cost support in a given year in an account dedicated to future high-cost improvements, as described above.

C. Measures for Non-Compliance

145. *Discussion.* The Commission adopts the process by which the Wireline Competition Bureau or the Wireless Telecommunications Bureau will authorize USAC to draw on the letter of credit to recover all of the support that has been disbursed in the event that the Phase II competitive bidding process recipient does not meet the relevant service milestones. In the *December 2014 Connect America Order,* the Commission determined that USAC would recover support from ETCs associated with their compliance gap in three separate circumstances. If after six months, the ETC fails to repay in full, either the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter authorizing USAC to draw on the letter of credit to recover 100 percent of the support that has been disbursed to the ETC.

146. First, for interim milestones, if the ETC has a compliance gap of 50 percent or more of the number of locations that the ETC is required to offer service to by the relevant interim milestone (*i.e.,* Tier 4 status), USAC will withhold 50 percent of the ETC's monthly support for that state, and the ETC will be required to file quarterly reports. If, after having 50 percent of support withheld for six months, the ETC has not reported that it has a compliance gap of less than 50 percent (*i.e.,* the ETC is eligible for Tier 3 or lower or is in compliance), USAC will withhold 100 percent of the ETC's support for the state and will commence recovery action for a percentage of support that is equal to the ETC's compliance gap plus 10 percent of the ETC's support that has been paid to that point. At this point, this ETC will have six months to pay back the amount of support that USAC seeks to recover. If at the end of six months the ETC has not fully paid back the support, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect and USAC will draw on the letter of credit to recover all of the support that has been disbursed to the ETC. If at any point during the six-year period for deployment the ETC reports that it is eligible for Tier 1 status, the ETC will have its support fully restored including any support that had been withheld, USAC will repay any funds that were recovered, and the ETC will move to Tier 1 status.

147. Second, if an ETC misses the final milestone, it must identify by what percentage the milestone has been missed. It will then have 12 months from that date to come into full compliance with the milestone. If it does not come into full compliance within 12 months, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter and USAC will recover an amount of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year period for the relevant number of locations the ETC has failed to offer service to, plus 10 percent of the ETC's total Phase II support received in the state over the six-year period for deployment. At this point, the ETC will have six months to repay the support USAC seeks to recover. If at the end of six months the ETC has not fully paid back the support, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the letter of credit to recover all of the support that has been disbursed to the ETC.

148. Third, if after the build-out has been verified and the ETC closes its letter of credit it is determined that the ETC does not have sufficient evidence to demonstrate that it is offering service to the total number of required locations, USAC will recover an amount of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year period for the relevant number of locations for which the ETC has failed to produce sufficient evidence, plus 10 percent of the ETC's total support received in that state over the six-year time period. Because the ETC's build-out will have already been verified before it may close its letter of credit, the Commission does not find it necessary to require that the ETC continue to keep its letter of credit open in the event that the ETC does not repay the Commission after it is found to be lacking evidence. Instead, the Commission notes that if the ETC does not repay the Commission after six months it may be subject to additional non-compliance measures, including forfeitures.

149. The Commission concludes that drawing on the letter of credit in the event that the ETC fails to repay the support that USAC is instructed to recover will ensure that the Commission will be able to recover the support in the event that the ETC is unable to pay. The Commission notes that through the support reduction framework the Commission adopted in the *December 2014 Connect America Order,* the ETC will have a number of opportunities to cure before the Commission will seek to recover the support that is associated with the compliance gap. And the Commission will only recover 100 percent of the support that has been disbursed in those cases where the ETC is unable to repay the support associated with its compliance gap. Because an ETC that is unable to repay the support is also unlikely to be able to meet its obligations to use the support to offer service meeting the Commission's requirements, recovering 100 percent of the support will allow the Commission to re-award the support through an alternative mechanism to an ETC that will be able to meet its obligations.

150. Finally, the Commission notes that Phase II auction recipients may also be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including, but not limited to potential revocation of ETC designation and

suspension or debarment. Phase II auction recipients will also be subject to any non-compliance measures that are adopted in conjunction with a methodology for high-cost recipients to measure and report speed and latency performance to fixed locations.

VIII. Remote Areas Fund

151. *Discussion.* While the Commission previously decided to include census blocks that are deemed to be extremely high-cost in the Phase II auction, it recognizes that not all of those areas will receive bids. Moreover, the Commission recognizes that there may not be winning bidders for all of the high-cost census blocks in the declined states that are included in the Phase II auction. At the same time, the Commission also recognizes that in the intervening period, it is possible that some areas will become served through market forces and will not require ongoing support from the universal service fund. The Commission now adopts a framework and rules herein to ensure the Commission moves expeditiously to implement a Remote Areas Fund for those areas that remain unserved with broadband after the Phase II auction. These areas will comprise, in effect, the "remote areas" where the Commission will target Remote Areas Fund support. The Commission's objective is to bring broadband to these unserved areas across the country as soon as possible.

152. The Commission concludes that it will award support for the Remote Areas Fund through a competitive bidding process, with providers receiving support to serve defined areas that remain unserved with broadband service meeting the Commission's public interest obligations, determined based on the most recent publicly available FCC Form 477 data available prior to the opening of the filing window for short-form applications. For several reasons, the Commission concludes that it will be most efficient to award support from the Remote Areas Fund to serve a designated area through a competitive bidding process, rather than as a portable consumer subsidy. The Commission expects that the competitive process will drive down the amount of support awarded to serve these remote locations, enabling the Commission to utilize its Remote Areas funding most effectively. The Commission also believes this approach will best provide incentives for providers to deploy broadband-capable infrastructure in these remote areas. The Commission recognizes the need for service providers to have some assurance that there will be sufficient demand in these remote areas to warrant making the necessary investments to extend service, and by awarding support to serve a given area, bidders will be able to aggregate demand sufficiently to warrant the investments necessary to serve such areas. The Commission notes that a number of bidders in the rural broadband experiments were ultimately authorized to begin receiving support in category 3 which was limited to bids for only extremely high-cost census blocks, suggesting that these bidders were able to put together bids that enabled them to make a business case to serve the highest cost areas. Lastly, by moving swiftly to auction support from the Remote Areas Fund utilizing many of the same processes and procedures established for the Phase II auction, the Commission will bring service to consumers more quickly than would likely be the case if it were to adopt an approach that has never been implemented to date in the high-cost program. The Commission does not rule out the possibility of implementing some form of a portable consumer subsidy at a future date, however, should there remain areas after the Remote Areas Fund auction that remain unserved.

153. The areas eligible for the Remote Areas Fund auction will generally be those areas not subject to winning bids in the Phase II auction that are not served with voice and 10/1 Mbps broadband according to the most recently published FCC Form 477 data that are available prior to the opening of the expedited filing window for applicants for the Remote Areas Fund auction. The Commission directs the Bureau to publish the list of eligible areas within 60 days after the announcement of winning bidders in the Phase II auction. The Commission reserves the right to make further adjustments to the eligible areas based on lessons learned from the Phase II auction, however, and its progress in implementing other Connect America Fund reforms in the intervening period.

154. The Commission's goal is to commence the Remote Areas Fund auction within a year of the close of the Phase II Auction. The specific dates and deadlines will be announced in a *Remote Areas Fund Auction Procedures Public Notice* after the Phase II auction.

155. The Commission intends that the Remote Areas Fund auction will occur as soon as feasible after the Phase II auction, providing for a limited period of time in between so that applicants that may wish to participate in both auctions may plan and prepare for the Remote Areas auction taking into account winning bids in the Phase II auction. Bidders qualified to bid in the Phase II auction will be able automatically to participate in this subsequent auction without having to file another short-form application, so long as there is no material change in any information filed in their Phase II short-form application.

156. Consistent with the rules established for the Phase II competitive bidding process, the Commission will not require bidders to be ETCs in order to bid in the Remote Areas Fund auction. Rather, they may obtain ETC designation after being selected as a winning bidder. The Commission finds this will serve the public interest for the same reasons previously stated when it adopted these measures for Phase II. Similarly, the Commission adopts the same timelines for submitting proof of ETC designation for Remote Areas Fund winning bidders for the same reasons stated above for the Phase II auction.

157. Similarly, the Commission adopts rules providing for a short-form application process to qualify entities eligible to bid and a long-form application to be filed by winning bidders that are similar in substance to the rules adopted above for the Phase II auction. As the Commission stated above, this approach will balance the need to collect essential information with administrative efficiency and will provide the Commission with assurance that interested participants are qualified to meet the terms and conditions of the Remote Areas Fund, if authorized to receive support. The Commission delegates authority to the Bureaus to adjust the format and timing of the Remote Areas Fund applications based on experience gained with the implementation of the Phase II auction. The Commission's goal is to conduct the Remote Areas Fund auction generally utilizing the same format and procedures adopted for the Phase II auction, although the Commission recognizes that some adjustments may need to be made.

158. As a general matter, support from the Remote Areas Fund will be awarded on similar terms and subject to the same rules as Phase II support awarded through the Phase II auction. The Commission expects that recipients will be subject to the same interim and final service milestones as Phase II auction winners, although it reserves the right to make adjustments if necessary to encourage auction participation. Recipients will be subject to the same reporting obligations as Phase II recipients and subject to the same measures for non-compliance. The Commission expects, however, that it may be necessary to relax performance

standards for the Remote Areas Fund. The Commission may make further adjustments as needed, based on what it learns from the Phase II auction.

159. The Commission does not decide at this time a number of issues that will need to be resolved before it can implement the Remote Areas Fund, including the public interest obligations for recipients of support, the term of support for the Remote Areas Fund, and whether to disburse support on a per-subscriber basis or a per-location basis. The Commission will decide those issues once it observes the outcome of the Phase II auction.

IX. Procedural Matters

A. Paperwork Reduction Act Analysis

160. This document contains new information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix C, *infra.*

B. Congressional Review Act

161. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

162. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* adopted in November 2011 (*USF/ICC Transformation FNPRM*) and the *Further Notice of Proposed Rulemaking* adopted in April 2014 (*April 2014 Connect America FNPRM*). The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011 and *April 2014 Connect America FNPRM,* 79 FR 39196, July 9, 2014, including comment on the IRFAs. The Commission did not receive any relevant comments in response to these IRFAs. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

163. Over the last several years, the Commission has engaged in a modernization of its universal service regime to support networks capable of providing voice and broadband, including developing a new forward-looking cost model to calculate the cost of providing service in rural and high-cost areas. In 2015, 10 price cap carriers accepted an offer of Phase II support calculated by a cost model in exchange for a state-level commitment to deploy and maintain voice and broadband service in the high-cost areas in their respective states. With this Report and Order (Order), the Commission now adopts rules to implement a competitive bidding process for Phase II of the Connect America Fund.

164. Specifically, building on decisions already made by the Commission, in this Order, the Commission:

- Adopt public interest obligations for recipients of support awarded through the Phase II competitive bidding process, that will be known in advance of the auction and that will continue for the duration of the term of support, recognizing that competitive bidding is likely to be more efficient if potential bidders know what their performance standards will be before bids are made. In particular, the Commission establishes four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, all at reasonably comparable rates, and for each tier will differentiate between bids that would commit to either lower or higher latency.
    - ○ The Commission's minimum performance tier requires that bidders commit to provide broadband speeds of at least 10 Mbps downstream and 1 Mbps upstream (10/1 Mbps) and offer at least 150 gigabytes (GB) of monthly usage.
    - ○ The Commission's baseline performance tier requires that bidders commit to provide at least 25 Mbps downstream and 3 Mbps upstream (25/3 Mbps) and offer a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher.
    - ○ The Commission's above-baseline performance tier requires that bidders commit to provide at least 100 Mbps downstream and 20 Mbps upstream (100/20 Mbps) and offer an unlimited monthly usage allowance.
    - ○ The Commission's Gigabit performance tier requires that bidders commit to provide at least 1 Gigabit per second (Gbps) downstream and 500 Mbps upstream and offer an unlimited monthly usage allowance.
    - ○ For each of the four tiers, bidders will designate one of two latency performance levels: (1) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds (ms), or (2) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).
- Adopt the same interim service milestones for winning bidders in the Phase II auction as for price cap carriers that accepted Phase II model-based support.
- Finalize the Commission's decisions regarding areas eligible for the Phase II competitive bidding process.
- Establish a budget for the Phase II competitive bidding process of $215 million in annual support.
- Provide general guidance on auction design, with the specific details to be determined by the Commission at a future date in the *Auction Procedures Public Notice,* after further opportunity for comment. The Commission will use weights to account for the different characteristics of service offerings that bidders propose to offer when ranking bids. The Commission expresses its preference for a multi-round auction format and for setting the minimum biddable unit as a census block group containing any eligible census blocks. The Commission concludes that reserve prices will not exceed support amounts determined by the Connect America Cost Model (CAM).
- Adopt a two-step application process, similar to Commission spectrum auctions and the Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions. In the pre-auction short-form application, a potential bidder will need to establish its baseline financial and technical capabilities in order to be eligible to bid. In the long-form review process, winning bidders will be required to provide additional information regarding their qualifications. They will be required to

obtain an acceptable letter of credit and designation as an eligible telecommunications carrier (ETC) before funding is authorized.

- Establish a baseline forfeiture for bidders that default before funding authorization.
- Establish a 180-day post-auction deadline for winning bidders to submit proof of their ETC designation during long-form review and forbear from the section 214(e)(5) service area conformance requirements.
- Adopt reporting requirements that will enable the Commission to monitor recipients' progress in meeting their interim deployment obligations, and a process by which the Wireline Competition Bureau (Bureau) or the Wireless Telecommunications Bureau will authorize the Universal Service Administrative Company (USAC) to draw on a letter of credit in the event of performance default.
- Adopt rules to establish the framework for the Remote Areas Fund, which will award support through a competitive bidding process to occur expeditiously after conclusion of the Phase II auction.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

165. There were no relevant comments filed that specifically addressed the rules and policies proposed in the *USF/ICC Transformation FNPRM* IRFA and the *April 2014 Connect America FNPRM*, IRFA.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

166. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

167. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

4. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

168. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A "small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

169. *Small Businesses.* Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.

170. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

171. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies in the Order.

172. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Order.

173. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA, contexts.

174. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Order.

175. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such

a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Order.

176. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, the Commission estimates that all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Order.

177. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

178. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

179. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the Order.

180. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to the Commission's data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

181. *Wireless Telecommunications Carriers (Except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

182. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events,

concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

183. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (AWS–1). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

184. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35843, June 6, 2000. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

185. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* 64 FR 33762, June 24, 1999, the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by the Commission's action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

186. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the Order.

187. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225

licenses: 216 EA Licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

188. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio ("SMR") geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

189. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

190. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Commission does not know how many of these firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

191. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with 10 bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

192. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

193. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three

years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses, identified as "entrepreneur" and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

194. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*, 72 FR 48814, August 24, 2007. The 700 MHz Second Report and Order revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty-three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

195. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

196. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, 65 FR 17594, April 4, 2000, the Commission adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

197. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

198. *Private Land Mobile Radio ("PLMR").* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

199. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

200. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, the Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies issued herein.

201. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground

Radiotelephone Service. The Commission will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Order.

202. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of the Commission's evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

203. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

204. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

205. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

206. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

207. 218–219 MHz Service. The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a "small

business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

208. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

209. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

210. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

211. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

212. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

213. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

214. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

215. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by its action.

216. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that

category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

217. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order.

218. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but 10 are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

219. *Open Video Services.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. In addition, the Commission notes that it has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

220. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1,000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

221. *Internet Publishing and Broadcasting and Web Search Portals.* The Commission's actions may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that "primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals)." The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

222. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily . . . provid[e] infrastructure for hosting or data processing services." The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $ $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may

be affected by rules adopted pursuant to the Order.

223. *All Other Information Services.* The Census Bureau defines this industry as including "establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals)." The Commission's actions pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by its action.

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

224. In the Order the Commission adopts today, it establishes four technology-neutral tiers of bids available for bidding with varying speed and usage allowances, and for each tier will differentiate between bids that would offer either lower or higher latency. All bidders must offer a service at rates that are within a reasonable range of rates for comparable fixed wireline services offered in urban areas

225. Once a winning bidder is authorized to begin receiving Phase II auction support, it will have six years to deploy a voice and broadband-capable network meeting the relevant public interest obligations to the required number of locations included in its bid. Phase II auction recipients will also be required to meet interim service milestones. They will have to complete construction to 40 percent of the requisite number of locations in a state by the end of the third year of funding authorization, an additional 20 percent in subsequent years, with 100 percent by the end of the sixth year. Phase II recipients that at the end of their support term have deployed to at least 95 percent, but less than 100 percent of the number of funded locations will be required to refund support based on the number of funded locations left unserved in the state. The amount refunded will be based on one-half the average support for the top five percent of the highest cost funded locations nationwide.

226. Entities that are interested in participating in the Phase II auction will be required to file a short-form application in order to establish their eligibility to participate. In their short-form applications, they will be required to submit any information or documentation required to establish their eligibility for any bidding credits the Commission adopts. If applicants are already ETCs they will need to identify themselves as such and all applicants will be required to submit a certification acknowledging that they must be designated as an ETC for the area in which they will receive support prior to being authorized to begin receiving support. Applicants will be required to submit a certification of their financial and technical capabilities to provide the required service in the required timeframe and information that establishes their identity, including disclosing parties with ownership interests and any agreements the applicants may have relating to the support to be sought through the Phase II auction. Applicants will also be required to indicate the type of bid they intend to place and describe the technology or technologies that will be used to provide service for each category of bid. If an applicant plans to use spectrum, it must also provide additional details about its spectrum access, including demonstrating that it has the proper authorizations, if applicable, and access and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements.

227. Applicants will also be required to certify in their short-form application that they have provided voice, broadband, and/or electric transmission or distribution services for at least two years or they are the wholly-owned subsidiary of such an entity, and specify the number of years they have been operating. Applicants that have provided voice or broadband services must also certify that they have filed FCC Form 477s as required during that time period. Applicants that have operated only an electric distribution or transmission network must submit qualified operating or financial reports for the relevant time period that they have filed with the relevant financial institution along with a certification stating that those submissions are the true and accurate copies of the submissions made to the relevant financial institution. Applicants that are able to demonstrate that they have operated such a network for at least two years will also be required to submit the prior fiscal year's audited financial statements. Applicants that meet these requirements but that do not audit their financial statements in the ordinary course of business can instead certify that they will submit their audited financial statements for the prior fiscal year during the long-form application review process if they are selected as a winning bidder. A winning bidder that fails to submit its audited financial statements during the long-form application stage will be subject to a forfeiture. If applicants cannot meet these requirements, in the alternative, applicants may instead submit audited financial statements from the three most recent consecutive fiscal years and a letter of interest from a qualified bank that the bank would provide a letter of credit to the bidder if the bidder were selected for bids of a certain dollar magnitude. The short-form application may also include additional certifications or requirements that are adopted in an auction procedures public notice.

228. Within a specified number of days of the release of a public notice announcing an entity as a winning bidder, that winning bidder will be required to file a long-form application. In this long-form application, winning bidders will be required to submit a self-certification regarding their financial and technical qualifications and a self-certification that specifies that that they will be able to meet all of the applicable public interest obligations for the relevant categories, including the requirement that they offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas. Winning bidders will also be required to submit a description of the technology and system design they intend to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements. Winning bidders proposing to use wireless technologies must also provide certain information related to their spectrum access and licenses if applicable.

229. Winning bidders will also have to certify in their long-form applications that they have available funds for all project costs that will exceed the amount of support that will be received

from the Phase II auction for the first two years of their support term and that they will comply with program requirements, including service milestones. They will also have to describe how the required construction will be funded and include financial projections that demonstrate that they can cover the necessary debt service payments over the life of the loan. The long-form application may also include additional certifications or requirements that are adopted in an auction procedures public notice.

230. Within the number of days specified by public notice, the winning bidder will be required to submit a letter of credit commitment letter from a qualified bank as part of the long-form application process. Within 180 days of being announced as a winning bidder, winning bidders that demonstrated in their short-form application that they had provided a voice, broadband and/or electric distribution or transmission service for at least two years and did not submit their audited financials during the short-form application process, must submit their audited financial statements for the prior year. Within 180 days of an entity being announced as a winning bidder, the winning bidder will be required to submit appropriate documentation in its long-form application of its ETC designation in all areas for which it will receive support, documentation showing that the designated areas cover the bid areas, and a letter from an officer of the company certifying that the ETC designation covers the relevant areas where the winning bidder will receive support.

231. After the Commission has reviewed the winning bidder's long-form application and has determined that it is qualified to be authorized to begin receiving Phase II support, a public notice will be released stating that the winning bidder is ready to be authorized. At that point, the winning bidder will have the number of days specified by public notice to submit an irrevocable standby letter of credit from a bank that meets the Commission's requirements and an opinion letter from legal counsel. After the letter of credit and opinion letter are approved a public notice will be released authorizing the winning bidder to begin receiving Phase II auction support. Phase II recipients will be required to maintain an open and renewed letter of credit until USAC has verified that their build-outs are complete.

232. If an entity that files a short-form application defaults, it will be subject to a forfeiture. An entity will be considered in default if it fails to timely file a long-form application or meet document submission deadlines, is found ineligible or unqualified to receive Phase II support by the Bureaus on delegated authority, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of the support.

233. Once a Phase II recipient has been authorized to begin receiving support, it will be required to report certain information to the Commission so that the Commission can track the progress of Phase II recipients and monitor their use of the public's funds before and after they meet service milestones. Specifically, each year Phase II auction recipients will be required to submit by the last business day of the second calendar month following each support year a list of the geocoded locations and the total number of locations to which they have newly offered service meeting the requisite requirements with Connect America support in the prior year. The first list they submit, will also include a list of all of the locations where the recipient already offers service meeting the Commission's requirements before receiving support. Carrier are encouraged to submit their locations on a rolling basis to an online portal that will be developed by the Bureau and USAC, 30 days from the date of deployment. By the last business day of the second calendar month following the end of certain support years, recipients will also be required to submit certifications that they have met the relevant interim service milestones.

234. Like all recipients of Connect America support, all Phase II recipients are also required to file section 54.313 annual reports and section 54.314 certifications. In addition to other information required to be submitted in the section 54.313 annual reports, Phase II recipients will be required to identify the total amount of Connect America Phase II support they used for capital expenditures in the previous year and certify that they have available funds for all project costs that will exceed the amount of support that will be received from the Phase II auction for the next calendar year. After they have met the final service milestone, recipients will also be required to certify in their section 54.313 annual reports that the network they operated in the prior year met the Commission's performance requirements.

235. Analogous application and reporting requirements also are adopted for recipients of support awarded through the Remote Areas Fund auction.

6. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

236. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

237. The Commission has taken a number of steps to ensure that small entities have the opportunity to participate in the Phase II auction. For example, the Commission adopts different performance standards for bidders to maximize the types of entities that can participate in the Phase II auction. Recognizing that not all entities, including some small entities, will be able to meet the baseline performance standards the Commission adopts, it permits entities to choose to meet minimum performance requirements. Although the Commission will rank bids using weights and minimum performance bidders are not guaranteed a 10-year support term under certain circumstances, it does not restrict the geographic area where entities placing bids for relaxed standards can bid.

238. Because the Phase II challenge process was a resource-intensive process for all entities involved, the Commission has also decided to rely on Form 477 data and conduct a more streamlined challenge process to determine areas that are eligible for the Phase II auction. This means that competitors, who can be small entities, that qualify as an unsubsidized competitor will only have to file a Form 477 as they are already required to do to ensure that the areas they serve are not overbuilt and may submit comments within 30 days of the publication of the preliminary eligible census block list if they have built out since they have submitted June 2015 Form 477 data.

239. The Commission expects that the minimum geographic area for bidding will be a census block group containing one or more eligible census blocks. The Commission found adopting a larger minimum geographic unit would preclude entities from participating in the Phase II auction, including small

entities that intend to construct a smaller network or edge out their networks. The Commission expects that the auction design adopted by the Commission in the *Auction Procedures Public Notice* will similarly account for the needs of small entities.

240. Based on lessons learned from the rural broadband experiments and in response to comments submitted by participating entities, including small entities, the Commission also adopts requirements for the short-form and long-form applications that will maximize the number and types of entities that can participate. For example, in the rural broadband experiments, the Commission required that provisionally selected bidders submit three years of audited financials. A number of entities, including small entities, could not meet this requirement because they had not been in business for three years or they claimed audited financials were prohibitively expensive. For the Phase II auction and the Remote Areas Fund, the Commission will require that applicants certify in their short-form application that they have provided voice, broadband, and/or electric distribution or transmission services for at least two years or that they are the wholly-owned subsidiary of such an entity. Applicants that have provided voice or broadband services must also certify that they have filed FCC Form 477s as required during that time period and submit their audited financial statements from the prior fiscal year. Applicants that have operated only an electric distribution or transmission network must submit qualified operating or financial reports. As an alternative, the Commission also permits applicants that have demonstrated that they have operated a network for two years but do not audit their financial statements in the ordinary course of business, many which may be small companies, to wait to submit audited financial statements until the long-form application review process. This will allow such applicants to avoid the cost of obtaining an audit if they are not ultimately announced as winning bidders. Also, by requiring only one year of audited financials, the Commission reduces the cost of this requirement for entities that have already demonstrated that they are able to maintain a voice, broadband, and/or electric distribution or transmission network for two years.

241. Recognizing that these requirements may preclude entities, including small entities, that have not operated a voice, broadband, and/or electric distribution or transmission network for two years, the Commission also provides the alternative of letting applicants instead submit three year of audited financials and a letter of interest from a qualified bank that the bank would provide a letter of credit to the bidder if the bidder were selected for bids of a certain dollar magnitude. The Commission concluded that its interest in having some level of insight into the financial health over a significant period of time of applicants that lack an operating history outweigh the costs of obtaining three years of financial statements for this subset of entities.

242. Additionally, the Commission has taken steps to reduce the costs of the letter of credit requirement for the recipients of support awarded through a competitive bidding process to serve fixed locations in response to claims from entities, particularly small entities, that the letter of credit requirement for the rural broadband experiments was prohibitively expensive. First, the Commission only requires that recipients maintain an open irrevocable standby letter of credit until it has been verified that they have met the final service milestone; in the rural broadband experiments the letter of credit originally had to be open and renewed for the entire support term. Second, recipients can modestly reduce the value of their letters of credit as they have made substantial progress in building out their networks by meeting certain service milestones. Third, the Commission has modified its issuing bank eligibility requirements for all recipients of support authorized through competitive bidding to serve fixed locations. The Commission has expanded the pool of eligible U.S. banks and made the National Rural Utilities Cooperative Finance Corporation (CFC) an eligible issuing bank. This will potentially reduce the costs and other challenges of obtaining a letter of credit for entities that lack established business relationships with larger banks.

243. The Commission notes that the reporting requirements it adopts are tailored to ensuring that support is used for its intended purpose and so that the Commission can monitor the progress of recipients in meeting their service milestones. The Commission finds that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on all entities, including small entities, particularly because much of the information that it requires they report is information it expects they will already be collecting to ensure they comply with the terms and conditions of support and they will be able to submit their location data on a rolling basis to help minimize the burden of uploading a large number of locations at once.

244. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

X. Ordering Clauses

245. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 160, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 503, 1302, and sections 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.427, and 1.429, that this Report and Order and concurrently adopted Further Notice of Proposed Rulemaking *is adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval. It is the Commission's intention in adopting these rules that if any of the rules that the Commission retains, modifies, or adopts herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

246. *It is further ordered* that, pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Waiver filed by NTCA—The Rural Broadband Association on Feb. 3, 2015 is *dismissed as moot in part* and *denied in part* to the extent described herein.

247. *It is further ordered* that, pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Waiver filed by The National Rural Utilities Cooperative Finance Corporation and the Rural Telephone Finance Cooperative on Jan. 21, 2015 is *dismissed as moot.*

248. *It is further ordered* that, pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Waiver filed by Allamakee-

Clayton Electric Cooperative, Inc. on Jan. 30, 2015 is *dismissed as moot.*

249. *It is further ordered* that, pursuant to section 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Waiver filed by Midwest Energy Cooperative, Inc. on March 20, 2015 is *dismissed as moot.*

250. *It is further ordered* that Part 54 of the Commission's rules, 47 CFR part 54, *is amended* as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after publication of the rules amendments in the **Federal Register**, except to the extent they contain information collections subject to PRA review. The rules that contain information collections subject to PRA review *shall become effective* immediately upon announcement in the **Federal Register** of OMB approval and an effective date.

251. *It is further ordered* that the Commission *shall send* a copy of this Report and Order and concurrently adopted Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

252. *It is further ordered*, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order and concurrently adopted Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Civil rights, Claims, Communications common carriers, Cuba, Drug abuse, Environmental impact statements, Equal access to justice, Equal employment opportunity, Federal buildings and facilities, Government employees, Income taxes, Indemnity payments, Individuals with disabilities, Investigations, Lawyers, Metric system, Penalties, Radio, Reporting and recordkeeping requirements, Telecommunications, Television, Wages.

47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1and 54 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Section 1.21001 is amended by revising paragraph (b)(6) to read as follows:

§ 1.21001 Participation in competitive bidding for support.

* * * * *

(b) * * *

(6) Certification that the applicant is in compliance with all statutory and regulatory requirements for receiving the universal service support that the applicant seeks, or, if expressly allowed by the rules specific to a high-cost support mechanism, a certification that the applicant acknowledges that it must be in compliance with such requirements before being authorized to receive support;

* * * * *

PART 54—UNIVERSAL SERVICE

■ 3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 4. Section 54.309 is amended by revising paragraph (a) to read as follows:

§ 54.309 Connect America Fund Phase II Public Interest Obligations.

(a) Recipients of Connect America Phase II support are required to offer broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas. For purposes of determining reasonable comparable usage capacity, recipients are presumed to meet this requirement if they meet or exceed the usage level announced by public notice issued by the Wireline Competition Bureau. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(1) Recipients of Connect America Phase II model-based support are required to offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream.

(2) Recipients of Connect America Phase II support awarded through a competitive bidding process are required to offer broadband service meeting the performance standards required in bid tiers based on performance standards.

(i) Winning bidders meeting the minimum performance tier standards are required to offer broadband service at actual speeds of 10 Mbps downstream and 1 Mbps upstream and to offer at least 150 gigabytes of monthly usage.

(ii) Winning bidders meeting the baseline performance tier standards are required to offer broadband service at actual speeds of at least 25 Mbps downstream and 3 Mbps upstream and offer a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher, and announced annually by public notice issued by the Wireline Competition Bureau over the 10-year term.

(iii) Winning bidders meeting the above-baseline performance tier standards are required to offer broadband service at actual speeds of at least 100 Mbps downstream and 20 Mbps upstream and offer an unlimited monthly usage allowance.

(iv) Winning bidders meeting the Gigabit performance tier standards are required to offer broadband service at actual speeds of at least 1 Gigabit per second downstream and 500 Mbps upstream and offer an unlimited monthly usage allowance.

(v) For each of the tiers in paragraphs (a)(2)(i) through (iv) of this section, bidders are required to meet one of two latency performance levels:

(A) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds; and

(B) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).

* * * * *

■ 5. Section 54.310 is amended by revising paragraph (c) to read as follows:

§ 54.310 Connect America Fund for Price Cap Territories—Phase II.

* * * * *

(c) *Deployment obligation.* Recipients of Connect America Phase II model-based support must complete deployment to 40 percent of supported locations by December 31, 2017, to 60 percent of supported locations by December 31, 2018, to 80 percent of supported locations by December 31, 2019, and to 100 percent of supported locations by December 31, 2020. Recipients of Connect America Phase II awarded through a competitive bidding process must complete deployment to 40 percent of supported locations by the end of the third year, to 60 percent of supported locations by the end of the fourth year, to 80 percent of supported locations by the end of the fifth year, and to 100 percent of supported locations by the end of the sixth year. Compliance shall be determined based on the total number of supported locations in a state.

(1) For purposes of meeting the obligation to deploy to the requisite number of supported locations in a state, recipients of Connect America Phase II model-based support may serve unserved locations in census blocks with costs above the extremely high-cost threshold instead of locations in eligible census blocks, provided that they meet the public interest obligations set forth in § 54.309(a) introductory text and (a)(1) for those locations and provided that the total number of locations covered is greater than or equal to the number of supported locations in the state.

(2) Recipients of Connect America Phase II support may elect to deploy to 95 percent of the number of supported locations in a given state with a corresponding reduction in support computed based on the average support per location in the state times 1.89.

* * * * *

■ 6. Section 54.313 is amended by revising paragraph (e) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(e) In addition to the information and certifications in paragraph (a) of this section, the following requirements apply to Phase II and Remote Areas Fund recipients:

(1) Any price cap carrier that elects to receive Connect America Phase II model-based support shall provide:

(i) On July 1, 2016 a list of the geocoded locations already meeting the § 54.309 public interest obligations at the end of calendar year 2015, and the total amount of Phase II support, if any, the price cap carrier used for capital expenditures in 2015.

(ii) On July 1, 2017 and every year thereafter ending July 1, 2021, the following information:

(A) The number, names, and addresses of community anchor institutions to which the eligible telecommunications carrier newly began providing access to broadband service in the preceding calendar year;

(B) The total amount of Phase II support, if any, the price cap carrier used for capital expenditures in the previous calendar year; and

(C) A certification that it bid on category one telecommunications and Internet access services in response to all FCC Form 470 postings seeking broadband service that meets the connectivity targets for the schools and libraries universal service support program for eligible schools and libraries (as described in § 54.501) located within any area in a census block where the carrier is receiving Phase II model-based support, and that such bids were at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

(2) Any recipient of Phase II or Remote Areas Fund support awarded through a competitive bidding process shall provide:

(i) Starting the first July 1st after receiving support until the July 1st after the recipient's support term has ended:

(A) The number, names, and addresses of community anchor institutions to which the eligible telecommunications carrier newly began providing access to broadband service in the preceding calendar year;

(B) The total amount of support, if any, the recipient used for capital expenditures in the previous calendar year; and

(C) A certification that it bid on category one telecommunications and Internet access services in response to all FCC Form 470 postings seeking broadband service that meets the connectivity targets for the schools and libraries universal service support program for eligible schools and libraries (as described in § 54.501) located within any area in a census block where the carrier is receiving support awarded through auction, and that such bids were at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

(ii) Starting the first July 1st after receiving support until the July 1st after the recipient's penultimate year of support, a certification that the recipient has available funds for all project costs that will exceed the amount of support that will be received for the next calendar year.

(iii) Starting the first July 1st after meeting the final service milestone in § 54.310(c) of this chapter until the July 1st after the Phase II recipient's support term has ended, a certification that the Phase II-funded network that the Phase II auction recipient operated in the prior year meets the relevant performance requirements in § 54.309 of this chapter, or that the network that the Remote Areas Fund recipient operated in the prior year meets the relevant performance requirements for the Remote Areas Fund.

* * * * *

■ 7. Section 54.315 is added to read as follows:

§ 54.315 Application process for phase II support distributed through competitive bidding.

(a) Application to participate in competitive bidding for Phase II support. In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Phase II auction support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically qualified to meet the public interest obligations of § 54.309 for each relevant tier and in each area for which it seeks support;

(3) Disclose its status as an eligible telecommunications carrier to the extent applicable and certify that it acknowledges that it must be designated as an eligible telecommunications carrier for the area in which it will receive support prior to being authorized to receive support;

(4) Indicate the tier of bids that the applicant plans to make and describe the technology or technologies that will be used to provide service for each tier of bid;

(5) Submit any information required to establish eligibility for any bidding weights adopted by the Commission in an order or public notice;

(6) To the extent that an applicant plans to use spectrum to offer its voice

and broadband services, demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for at least 10 years from the date of the funding authorization; and

(7) Submit specified operational and financial information.

(i) Submit a certification that the applicant has provided a voice, broadband, and/or electric transmission or distribution service for at least two years or that it is a wholly-owned subsidiary of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must certify that it will provide financial statements from the prior fiscal year that are audited by a certified independent public accountant by a specified deadline during the long-form application review process.

(A) If the applicant has provided a voice and/or broadband service it must certify that it has filed FCC Form 477s as required during this time period.

(B) If the applicant has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.

(ii) If an applicant cannot meet the requirements in paragraph (a)(7)(i) of this section, in the alternative it must submit the audited financial statements from the three most recent fiscal years and a letter of interest from a bank meeting the qualifications set forth in paragraph (c)(2) of this section, that the bank would provide a letter of credit as described in paragraph (c) of this section to the bidder if the bidder were selected for bids of a certain dollar magnitude.

(b) *Application by winning bidders for Phase II auction support*—(1) *Deadline.* As provided by public notice, winning bidders for Phase II auction support shall file an application for Phase II auction support no later than the number of business days specified after the public notice identifying them as winning bidders.

(2) *Application contents.* An application for Phase II auction support must contain:

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter;

(ii) Certification that the applicant is financially and technically qualified to meet the public interest obligations of § 54.309 for each tier in which it is a winning bidder and in each area for which it seeks support;

(iii) Certification that the applicant will meet the relevant public interest obligations for each relevant tier, including the requirement that it will offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas;

(iv) A description of the technology and system design the applicant intends to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements in § 54.309;

(v) Certification that the applicant will have available funds for all project costs that exceed the amount of support to be received from the Phase II auction for the first two years of its support term and that the applicant will comply with all program requirements, including service milestones;

(vi) A description of how the required construction will be funded, including financial projections that demonstrate the applicant can cover the necessary debt service payments over the life of the loan, if any;

(vii) Certification that the party submitting the application is authorized to do so on behalf of the applicant; and

(viii) Such additional information as the Commission may require.

(3) No later than the number of days provided by public notice, the applicant shall submit a letter from a bank meeting the eligibility requirements outlined in paragraph (c) of this section committing to issue an irrevocable stand-by letter of credit, in the required form, to the winning bidder. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit.

(4) No later than 180 days after the public notice identifying them as a winning bidder, bidders that did not submit audited financial statements in their short-form application pursuant to paragraph (a)(7)(i) of this section must submit the financial statements from the prior fiscal year that are audited by a certified independent public accountant.

(5) No later than 180 days after the public notice identifying it as a winning bidder, the applicant shall certify that it is an eligible telecommunications carrier in any area for which it seeks support and submit the relevant documentation supporting that certification.

(6) *Application processing.* (i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Phase II auction support after the winning bidder submits a letter of credit and an accompanying opinion letter as described in paragraph (c) of this section, in a form acceptable to the Commission. Each such winning bidder shall submit a letter of credit and accompanying opinion letter as required by paragraph (c) of this section, in a form acceptable to the Commission no later than the number of business days provided by public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Phase II auction support.

(c) *Letter of credit.* Before being authorized to receive Phase II auction support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) *Value.* Each recipient authorized to receive Phase II support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to at a minimum the amount of Phase II auction support that has been disbursed and that will be disbursed in the coming year, until the Universal Service Administrative Company has verified that the recipient met the final service milestone as described in § 54.310(c).

(i) Once the recipient has met its 60 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

(ii) Once the recipient has met its 80 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 80 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

(2) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(i) Any United States bank

(A) That is insured by the Federal Deposit Insurance Corporation, and

(B) That has a bank safety rating issued by Weiss of B- or better; or

(ii) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iv) Any non-United States bank

(A) That is among the 50 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date);

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission;

(C) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's; and

(D) Issues the letter of credit payable in United States dollars

(3) A winning bidder for Phase II auction support shall provide with its letter of credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the "Bankruptcy Code"), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(4) Authorization to receive Phase II auction support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.

(i) Failure by a Phase II auction support recipient to meet its service milestones as required by § 54.310 will trigger reporting obligations and the withholding of support as described in § 54.320(c). Failure to come into full compliance within 12 months will trigger a recovery action by the Universal Service Administrative Company. If the Phase II recipient does not repay the requisite amount of support within six months, the Universal Service Administrative Company will be entitled to draw the entire amount of the letter of credit and may disqualify the Phase II auction support recipient from the receipt of Phase II auction support or additional universal service support.

(ii) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau or the Wireless Telecommunications Bureau, or their respective designees, which letter, attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

■ 8. Section 54.316 is amended by revising paragraph (a) introductory text, paragraph (a)(4), and paragraph (b) introductory text, adding paragraphs (b)(4) and (5), and revising paragraph (c) to read as follows:

§ 54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

(a) *Broadband deployment reporting.* Rate-of Return ETCs, ETCs that elect to receive Connect America Phase II model-based support, and ETCs awarded support to serve fixed locations through a competitive bidding process shall have the following broadband reporting obligations:

* * * * *

(4) Recipients subject to the requirements of § 54.310(c) shall report the number of locations for each state and locational information, including geocodes, where they are offering service at the requisite speeds. Recipients of Phase II Auction support and Remote Areas Fund support shall also report the technology they use to serve those locations.

(b) *Broadband deployment certifications.* Rate-of Return ETCs, ETCs that elect to receive Connect America Phase II model-based support, and ETCs awarded support through a competitive bidding process shall have the following broadband deployment certification obligations:

* * * * *

(4) Recipients of Connect America Phase II auction support shall provide: By the last business day of the second calendar month following each service milestone in § 54.310(c), a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specific in § 54.309 to the required percentage of its supported locations in each state as set forth in § 54.310(c).

(5) Recipients of Remote Areas Fund support shall provide: By the last business day of the second calendar month following each service milestone specified by the Commission, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations to the required percentage of its supported locations in each state.

(c) *Filing deadlines.* In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designations, it must submit the annual reporting information as set forth below.

(1) Price cap carriers that accepted Phase II model-based support and rate-of-return carriers must submit the annual reporting information required by March 1 as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the March 1 deadline, but by March 9, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that files on or after March 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction;

(iii) *Grace period.* An eligible telecommunications carrier that submits the annual reporting information required by this section after March 1 but before March 5 will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) in their report due July 1 of the prior year have not missed the March 1 deadline in any prior year.

(2) Recipients of support to serve fixed locations awarded through a competitive bidding process must submit the annual reporting information required by the last business day of the second calendar month following the relevant support years as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the deadline, but within seven days of the deadline, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that filed on or after the eighth day following the deadline will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction;

(iii) *Grace period.* An eligible telecommunications carrier that submits the annual reporting information required by this section within three days of the deadline will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) in their report due July 1 of the prior year have not missed the deadline in any prior year.

■ 9. Subpart J, consisting of §§ 54.801 through 54.806, is added to read as follows:

Subpart J—Remote Areas Fund

Sec.
54.801 Use of competitive bidding for Remote Areas Fund.
54.802 Geographic areas eligible for Remote Areas Fund support.
54.803 Provider eligibility.
54.804 Application process.
54.805 [Reserved]
54.806 Remote Areas Fund reporting obligations.

Subpart J—Remote Areas Fund

§ 54.801 Use of competitive bidding for Remote Areas Fund.

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of Remote Areas Fund support and the amount of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.802 Geographic areas eligible for Remote Areas Fund support.

Remote Areas Fund support may be made available for census blocks identified as eligible by public notice.

§ 54.803 Provider eligibility.

(a) Any eligible telecommunications carrier is eligible to receive Remote Areas Fund support in eligible areas.

(b) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in the Remote Areas Fund auction.

(c) To the extent any entity seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Remote Areas Fund support, its designation as an eligible telecommunications carrier may be conditional subject to the receipt of Remote Areas Fund support.

§ 54.804 Application process.

(a) Any entity qualified to bid in the Phase II auction pursuant to § 54.315(a) shall be pre-qualified to bid in the Remote Areas Fund auction, subject to the requirement that there be no material change in any information previously submitted in the application to bid for Phase II support.

(b) In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, any applicant to participate in competitive bidding for Remote Areas Fund support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically qualified to meet the public interest obligations established for Remote Areas Fund support;

(3) Disclose its status as an eligible telecommunications carrier to the extent applicable and certify that it acknowledges that it must be designated as an eligible telecommunications carrier for the area in which it will receive support prior to being authorized to receive support;

(4) Describe the technology or technologies that will be used to provide service for each bid;

(5) Submit any information required to establish eligibility for any bidding weights adopted by the Commission in an order or public notice;

(6) To the extent that an applicant plans to use spectrum to offer its voice and broadband services, demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for the term of support; and

(7) Submit specified operational and financial information.

(i) Submit a certification that the applicant has provided a voice, broadband, and/or electric transmission or distribution service for at least two years or that it is a wholly-owned subsidiary of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must certify that it will provide financial statements from the prior fiscal year that are audited by a certified independent public accountant by a specified deadline during the long-form application review process.

(A) If the applicant has provided a voice and/or broadband service it must certify that it has filed FCC Form 477s as required during this time period.

(B) If the applicant has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.

(ii) If an applicant cannot meet the requirements in paragraph (b)(7)(i) of this section, in the alternative it must submit the audited financial statements from the three most recent fiscal years and a letter of interest from a bank meeting the qualifications set forth in paragraph (d)(2) of this section, that the bank would provide a letter of credit as described in paragraph (d) of this section to the bidder if the bidder were selected for bids of a certain dollar magnitude.

(c) *Application by winning bidders for Remote Areas Fund support*—(1) *Deadline.* As provided by public notice, winning bidders for Remote Areas Fund support shall file an application for Remote Areas Fund support no later than the number of business days specified after the public notice identifying them as winning bidders.

(2) *Application contents.* An application for Remote Areas Fund support must contain:

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter;

(ii) Certification that the applicant is financially and technically qualified to meet the public interest obligations for Remote Areas Fund support in each area for which it seeks support;

(iii) Certification that the applicant will meet the relevant public interest obligations, including the requirement that it will offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas;

(iv) A description of the technology and system design the applicant intends to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements for Remote Areas Fund support;

(v) Certification that the applicant will have available funds for all project costs that exceed the amount of support to be received from the Remote Areas Fund for the first two years of its support term and that the applicant will comply with all program requirements, including service milestones;

(vi) A description of how the required construction will be funded, including financial projections that demonstrate the applicant can cover the necessary debt service payments over the life of the loan, if any;

(vii) Certification that the party submitting the application is authorized to do so on behalf of the applicant; and

(viii) Such additional information as the Commission may require.

(3) No later than the number of days provided by public notice, the applicant shall submit a letter from a bank meeting the eligibility requirements outlined in paragraph (d) of this section committing to issue an irrevocable stand-by letter of credit, in the required form, to the winning bidder. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit.

(4) No later than 180 days after the public notice identifying them as a winning bidder, bidders that did not submit audited financial statements in their short-form application pursuant to paragraph (b)(7)(i) of this section must submit the financial statements from the prior fiscal year that are audited by a certified independent public accountant.

(5) No later than 180 days after the public notice identifying it as a winning bidder, the applicant shall certify that it is an eligible telecommunications carrier in any area for which it seeks support and submit the relevant documentation supporting that certification.

(6) *Application processing.* (i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Remote Areas Fund support after the winning bidder submits a letter of credit and an accompanying opinion letter as described in paragraph (d) of this section, in a form acceptable to the Commission. Each such winning bidder shall submit a letter of credit and accompanying opinion letter as required by paragraph (d) of this section, in a form acceptable to the Commission no later than the number of business days provided by public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Remote Areas Fund support.

(d) *Letter of credit.* Before being authorized to receive Remote Areas Fund support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) *Value.* Each recipient authorized to receive Remote Areas Fund support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to at a minimum the amount of Remote Areas Fund support that has been disbursed and that will be disbursed in the coming year, until the Universal Service Administrative Company has verified that the recipient met the final service milestone as described in § 54.310(c).

(i) Once the recipient has met its 60 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

(ii) Once the recipient has met its 80 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 80 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

(2) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(i) Any United States bank

(A) That is insured by the Federal Deposit Insurance Corporation, and

(B) That has a bank safety rating issued by Weiss of B- or better; or

(ii) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iv) Any non-United States bank:

(A) That is among the 50 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date);

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission;

(C) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's; and

(D) Issues the letter of credit payable in United States dollars

(3) A winning bidder for Remote Areas Fund support shall provide with its letter of credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the "Bankruptcy Code"), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(4) Authorization to receive Remote Areas Fund support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.

(i) Failure by a Remote Areas Fund support recipient to meet its service milestones as required by § 54.310 will trigger reporting obligations and the withholding of support as described in § 54.320(c). Failure to come into full compliance within 12 months will trigger a recovery action by the Universal Service Administrative Company. If the Remote Areas Fund recipient does not repay the requisite amount of support within six months, the Universal Service Administrative Company will be entitled to draw the entire amount of the letter of credit and may disqualify the Remote Areas Fund support recipient from the receipt of Remote Areas Fund support or additional universal service support.

(ii) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau or the Wireless Telecommunications Bureau, or their respective designees, which letter, attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.805 [Reserved]

§ 54.806 Remote Areas Fund reporting obligations.

Recipients of Remote Areas Fund support shall be subject to the reporting obligations set forth in § 54.313.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 401
Medicare Program: Expanding Uses of Medicare Data by Qualified Entities; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 401

[CMS–5061–F]

RIN 0938–AS66

Medicare Program: Expanding Uses of Medicare Data by Qualified Entities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements requirements under Section 105 of the Medicare Access and CHIP Reauthorization Act of 2015 that expand how qualified entities may use and disclose data under the qualified entity program to the extent consistent with applicable program requirements and other applicable laws, including information, privacy, security and disclosure laws. This rule also explains how qualified entities may create non-public analyses and provide or sell such analyses to authorized users, as well as how qualified entities may provide or sell combined data, or provide Medicare claims data alone at no cost, to certain authorized users. In addition, this rule implements certain privacy and security requirements, and imposes assessments on qualified entities if the qualified entity or the authorized user violates the terms of a data use agreement required by the qualified entity program.

DATES: These regulations are effective on September 6, 2016.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Background

On April 16, 2015, the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10) was enacted. The law included a provision, Section 105, Expanding the Availability of Medicare Data, which takes effect on July 1, 2016. This section expands how qualified entities will be allowed to use and disclose data under the qualified entity program, including data subject to section 1874(e) of the Social Security Act (the Act), to the extent consistent with other applicable laws, including information, privacy, security and disclosure laws.

The Qualified Entity program was established by Section 10332 of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148). The implementing regulations, which became effective January 6, 2012, are found in subpart G of 42 CFR part 401 (76 FR 76542). Under those provisions, CMS provides standardized extracts of Medicare Part A and B claims data and Part D drug event data (hereinafter collectively referred to as Medicare claims data) covering one or more geographic regions to qualified entities at a fee equal to the cost of producing the data. Under the original statutory provisions, such Medicare claims data must be combined with other non-Medicare claims data and may only be used to evaluate the performance of providers and suppliers. The measures, methodologies and results that comprise such evaluations are subject to review and correction by the subject providers and suppliers, after which the results are to be disseminated in public reports.

Those wishing to become qualified entities are required to apply to the program. Currently, fourteen organizations have applied and received approval to be a qualified entity. Of these organizations, two have completed public reporting while the other twelve are in various stages of preparing for public reporting. While we have been pleased with the participation in the program so far, we expect that the changes required by MACRA will increase interest in the program.

Under section 105 of MACRA, effective July 1, 2016, qualified entities will be allowed to use the combined data and information derived from the evaluations described in 1874(e)(4)(D) of the Act to conduct non-public analyses and provide or sell these analyses to authorized users for non-public use in accordance with the program requirements and other applicable laws. In highlighting the need to comply with other applicable laws, we particularly note that any qualified entity that is a covered entity or business associate as defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) regulations at 45 CFR 160.103 will need to ensure compliance with any applicable HIPAA requirements, including the restriction on the sale of protected health information (PHI) without authorization at 45 CFR 164.502(a)(5)(ii).

In addition, qualified entities will be permitted to provide or sell the combined data, or provide the Medicare claims data alone at no cost, again, in accordance with the program requirements and other applicable laws, to providers, suppliers, hospital associations, and medical societies. Qualified entities that elect to provide or sell analyses and/or data under these new provisions will be subject to an assessment if they or the authorized users to whom they disclose patient-identifiable data in the form of analyses or raw data act in a manner that violates the terms of a program–required Qualified Entity Data Use Agreement (QE DUA). Furthermore, qualified entities that make analyses or data available under these new provisions will be subject to new annual reporting requirements to aid CMS in monitoring compliance with the program requirements. These new annual reporting requirements will only apply to qualified entities that choose to provide or sell non-public analyses and/or provide or sell combined data, or provide Medicare claims data alone at no cost.

We believe these changes to the qualified entity program will be important in driving higher quality, lower cost care in Medicare and the health system in general. We also believe that these changes will increase interest in the qualified entity program, leading to more transparency regarding provider and supplier performance and innovative uses of data that will result in improvements to the healthcare delivery system while still ensuring appropriate privacy and security protections for beneficiary-identifiable data.

II. Provisions of the Proposed Regulations and Responses to Public Comments

In the February 2, 2016 **Federal Register** (81 FR 5397), we published the proposed rule entitled, “Expanding Uses of Medicare Data by Qualified Entities.” We provided a 60-day public comment period.

In the proposed rule, to implement the new statutory provisions of section 105 of MACRA, we proposed to amend and make conforming changes to part 401, subpart G, “Availability of Medicare Data for Performance Measurement.” We received approximately 50 comments on the proposed rule from a wide variety of individuals and organizations. Many of the comments were from providers or suppliers, or organizations representing providers and suppliers. We also received a number of comments from organizations engaged in performance measurement or data aggregation, some of whom are already qualified entities and others who may apply to be qualified entities in the future. Other comments came from registries, state Medicaid agencies, issuers, and individuals.

Many of the comments were positive and praised CMS for the proposed changes to the qualified entity program. Commenters also had a range of suggestions for changes to program requirements around the provision or sale of non-public analyses and data. We received a number of comments on expanding the data available to qualified entities to include claims data under Medicaid and the Children's Health Insurance Program (CHIP). In addition, we received a number of comments on the disclosure of data to qualified clinical data registries for quality improvement and patient safety activities.

A more detailed summary of the public comments and our responses can be found below in the appropriate sections of this final rule.

A. Non-Public Analyses

In accordance with Section 105(a)(1) of MACRA, we proposed to allow for the qualified entity's use of the combined data or information derived from the evaluations described in section 1874(e)(4)(D) of the Act to create non-public analyses and provide for the provision or sale of these analyses to authorized users in accordance with the program requirements discussed later in this section, as well as other applicable laws.

Comment: Commenters generally supported the proposal to allow qualified entities to create non-public analyses and either provide or sell these analyses. One commenter suggested that CMS expressly state at § 401.716(a) that qualified entities may provide or sell the non-public analyses. Another commenter recommended that CMS clarify that the non-public analyses are not subject to discovery or admittance into evidence in any judicial or administrative proceeding.

Response: We thank commenters for their support of the provision or sale of non-public analyses. Since the intent of this section is to allow qualified entities to both provide and sell non-public analyses in accordance with program requirements and other applicable laws, we have made changes to the regulation text to expressly state as much.

The statute, at 1874(e)(4)(D) of the Act, explicitly states, "data released to a qualified entity under this subsection shall not be subject to discovery or admission as evidence in judicial or administrative proceedings without consent of the applicable provider or supplier." We believe this statutory shield only applies to data released to the qualified entity under 1874(e) and when that data is in the possession of the qualified entity. Once the Medicare data is used to create non-public analyses and those non-public analyses are shared with authorized users, we do not believe the statutory shield applies.

1. Additional Analyses

In the proposed rule, we defined combined data as a set of CMS claims data provided under subpart G combined with a subset of claims data from at least one of the other claims data sources described in § 401.707(d). We did not propose to establish a minimum amount of data that must be included in the combined data set from other sources.

Comment: We received numerous comments on the definition of combined data. Many commenters recommended that CMS alter the definition of combined data to allow qualified entities to combine the Medicare data with clinical data for the creation of non-public analyses. These commenters stated that clinical data can help facilitate more appropriate analyses of provider resource use than just claims data alone. One commenter suggested that the definition of combined data also include consumer, socio-demographic, and other types of patient and provider-level data. Other commenters suggested that CMS clarify that combined data must, at a minimum, be comprised of CMS claims data merged with claims data from other sources, but other data may also be included in this combined data. One commenter agreed with the proposed definition of combined data.

Response: Section 105(a)(1)(A) of MACRA requires that the non-public analyses be based on the combined data described in 1874(e)(4)(B)(iii) as "data made available under this subsection with claims data from sources other than claims data under this title". Given these statutory limitations, we do not believe we can modify the definition of combined data.

However, we do recognize the value of combining claims data with clinical data for the development of non-public analyses and believe the use of clinical data in non-public analyses can significantly improve the value of these analyses to support quality and patient improvement activities. Clinical data such as laboratory test results or radiology and pathology reports, can add useful information about a patient's chronic condition burden, health status, and other factors that are not available in claims data. We can also see some value in combining consumer, socio-demographic, and other types of patient and provider level data with the Medicare data. As a result, we do want to clarify, that combined data requires at a minimum that the CMS claims data be combined with other sources of claims data, but that this does not prevent the qualified entity from merging other data (for example, clinical, consumer, or socio-demographic data) with the combined data for the development of non-public analyses.

Comment: Several commenters suggested that CMS require qualified entities to make public a list of the claims data it receives from CMS and the data it intends to combine with the CMS claims data for non-public analyses. One commenter suggested that this public release of information also include the percent of the cohort for analysis that each source is contributing.

Response: We are very committed to greater data transparency and all qualified entities are required to publicly report on provider performance as part of their participation in the program. However, we do not see significant value in requiring qualified entities to publicly report on the other sources of data used in non-public analyses since the analyses themselves will not be released publicly.

Comment: Several commenters stated that they supported the proposal not to establish a threshold for the minimum amount of data that must be included in the combined data set from other sources.

Response: We thank commenters for their support.

Comment: A few commenters recommended that the requirement to use combined data not preclude Medicare-only analyses. These commenters stated that Medicare-only analyses such as segmenting provider and supplier performance evaluations by payer type or conducting longitudinal analysis of differences in cost and quality for certain conditions by payer type would have significant value for many authorized users.

Response: We recognize the value of Medicare-only analyses, especially to help providers and suppliers understand how quality and costs differ across their patient population. In addition, as the CMS Innovation Center continues to develop and test new models of care, qualified entities may play a role in conducting analyses to help providers and suppliers better manage patient outcomes and costs under a different payment model. As a result, we want to clarify that the requirement to use combined data does not prevent qualified entities from providing or selling analyses that allow the authorized user to drill down by payer type to Medicare-only results. For example, a qualified entity may provide or sell a provider a report that includes the provider's overall score on certain quality and resource use measures (using combined data) and then presents scores for each of these measures by payer type (including a Medicare fee-for-service category).

2. Limitations on the Qualified Entities With Respect to the Sale and Provision of Non-Public Analyses

In accordance with section 105(a)(1) of MACRA, we proposed a number of limitations on qualified entities with respect to the sale and provision of non-public analyses.

First, we proposed to limit qualified entities to only providing or selling non-public analyses to issuers after the issuer provides the qualified entity with claims data that represents a majority of the issuers' covered lives in the geographic region and during the time frame of the non-public analyses requested by the issuer.

Comment: Many commenters supported the requirement of issuers to submit data to the qualified entity in order to receive analyses, but commenters had differing recommendations on the threshold of a majority of the issuers' covered lives. A number of commenters stated that CMS should not impose a threshold on the amount of data issuers must submit to a qualified entity to receive analyses. These commenters stated that the responsibility to ensure appropriate sample size for analyses should rest with the qualified entity. However, another commenter recommended that CMS require an issuer to provide the qualified entity with data on all of its covered lives for the geographic region and during the time frame of the non-public analyses requested. This commenter stated that requiring 100 percent of an issuer's covered lives would allow for more complete analyses. One commenter supported the threshold of the majority of an issuers covered lives, but stated that CMS should allow a health insurance issuer to request a non-public analysis for a geographic region outside the issuer's area of coverage, provided the issuer supplies claims data for a majority of the covered lives for the time period requested in all regions where it provides coverage. This commenter noted that analyses for other geographic regions may be beneficial to smaller, regional health insurance issuers interested in cost and utilization in a comparable region or looking to expand their areas of coverage. Another commenter supported the threshold, but recommended that CMS create an exceptions process for cases where legitimate and important analyses, such as identifying providers treating orphan diseases or analysis fundamental for a health plan issuer to enter a new market, that could not meet the proposed threshold. Finally, one commenter stated that CMS should allow qualified entities discretion to provide or sell analyses to health insurance issuers who have made a good faith commitment to providing the qualified entity with claims data that represents a majority of the health insurance issuer's covered lives by a certain future date.

Response: As we stated in the proposed rule, we considered not applying a threshold on the amount of data being provided by the issuer, but decided that specifying a threshold would encourage issuers to submit data to the qualified entity to be included in the public performance reports, increasing the reports' reliability. We believe this rationale still applies, and we still believe that there are a number of situations where requiring the issuer to provide 100 percent of their data for a given time period and geographic region is not feasible for the issuer. Based on comments, we revisited whether, on balance, requiring issuers to submit data that represents a majority of their covered lives in the geographic region and during the time frame of the non-public analyses requested by the issuer is generally the most appropriate threshold. In doing so, we recognized that in some cases an issuer may wish to have analyses for a geographic region where it does not provide coverage. However, we believe that in those instances the issuer should not be able to receive analyses due to the requirement at section 105(a)(1)(B)(ii) of MACRA, that a qualified entity may only provide or sell analyses to issuers that have provided the qualified entity with data. Therefore, we are modifying our proposed requirement around the issuer's claims data submission threshold to clarify that qualified entities may not provide or sell analyses to issuers when the analyses include geographic areas where the issuer does not offer coverage.

We would like to clarify, however, that the requirement that an issuer provide the qualified entity with claims data for at least 50 percent of its covered lives for the time period and geographic region covered by the analyses does not mean that all analyses provided or sold to the issuer would need to be based on analyses that considered at least 50 percent of the issuers' covered lives. So long as Medicare data is combined with other claims data to create the analyses, certain analyses, such as those on rare diseases, could be based only on a subset of the Medicare claims data and other claims data collected by the qualified entity. For example, an issuer could provide data for at least 50 percent of their covered lives for the time period and geographic region of the non-public analyses to a qualified entity. The qualified entity could then use a subset of that data, such as patients with a specific rare disease, combine it with Medicare data for patients with that rare disease, and provide or sell analyses about patients with the rare disease to the issuer. We would like to note, however, that qualified entities will need to be careful when producing analyses for issuers based on small populations and limited claims data to ensure that the resulting analyses truly are patient de-identified.

We understand the desire to create an exceptions process to allow issuers who do not contribute a majority of their covered lives in the geographic region and during the timeframe of the non-public analyses requested by the issuer to receive analyses. However, we believe that imposing a standard threshold for issuer covered lives across all qualified entities and issuers is the simplest and least administratively burdensome method to ensure equal treatment of qualified entities and issuers under this program.

We also understand the interest in allowing qualified entities to provide or sell analyses to health insurance issuers who have made a good faith commitment to provide the qualified entity with claims data for the majority of their covered lives in the geographic region and during the time frame of the non-public analyses requested by the issuer. However, we believe that this type of policy could reduce the incentives for issuers to share their data with the qualified entity.

Comment: Several commenters recommended that CMS provide additional clarity around the requirements for issuers' claims data submissions to the qualified entity. One commenter stated that qualified entities should be allowed to meet the covered lives threshold regardless of whether they have obtained the claims information directly from the issuer or indirectly from a third party. Several commenters recommended that CMS provide additional details on the term covered lives to clarify how this would be assessed in certain circumstances, such as when an issuer is a secondary payer or a member is not enrolled for a full year.

Response: Qualified entities may only provide or sell analyses to an issuer if it receives claims data from the issuer. Such data can be provided directly by the issuer, or it can be submitted on the issuer's behalf by an issuer's business associate. Regardless, the qualified entity is responsible for ensuring that the issuer or the issuer's business associate is truly providing the qualified entity with claims data for a majority of the issuer's covered lives in the geographic region and during the timeframe of the non-public analyses requested by the issuer.

We recognize the desire to allow use of data from other sources to meet the issuer's claims submission threshold. However, due to the statutory limits on to whom the qualified entity may release patient identifiable data, we do not believe it would be possible for an issuer to ever verify whether the data the qualified entity holds is representative of the majority of the issuer's covered lives in the applicable geographic region during the applicable time frame unless the issuer or its business associate was the source of such data.

Regarding the definition of covered lives, we recognize that there is no commonly accepted definition of covered lives. We plan to rely on the methods of calculating covered lives established in regulations promulgated by the Internal Revenue Service (IRS) in December of 2012. These regulations at 26 CFR 46.4375–1(c)(2) offer issuers four methods for calculating the average number of lives covered under a specified health insurance policy—(1) the actual count method, (2) the snapshot method, (3) the member months method, and (4) the state form method—and provide both the calculation method and an example for each of the four methods for counting covered lives. These calculations all only apply to health insurance policies and we would like to clarify that the calculation of covered lives for purposes of the qualified entity program does not include dental, disability, or life insurance policies. We have modified the regulatory text at § 401.716(b)(1) to refer directly to the IRS regulations.

Second, we proposed that except when patient-identifiable non-public analyses are shared with the patient's provider or supplier, all non-public analyses must be patient de-identified using the de-identification standards in the HIPAA Privacy Rule at 45 CFR 164.514(b). Additional information on the HIPAA de-identification standards can be found on the HHS Office for Civil Rights Web site at *http://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html.* We also proposed a definition for patient.

Comment: Many commenters stated that they agreed with CMS' proposal that analyses must be de-identified unless the recipient is the patient's provider or supplier. One commenter suggested that CMS allow other authorized users to receive patient-identifiable analyses, stating that patient-identifiable data will be equally valuable to the additional proposed authorized users, and that patients can also directly benefit from the sharing of patient-identifiable data beyond suppliers and providers.

Response: We thank commenters for their support. While we can see some advantages to sharing patient-identifiable analyses with other types of authorized users, the statutory language at Section 105(a)(3)(B) of MACRA states that analyses may not contain any information that individually identifies a patient unless the analyses are provided or sold to the patient's provider or supplier. Given the statutory requirements, we are finalizing our proposal that patient-identifiable analyses should only be shared with the patient's provider or supplier.

Comment: Many commenters stated that they agreed with the proposal to use the de-identification standards in the HIPAA Privacy Rule. However, one commenter suggested that CMS modify the HIPAA de-identification standards to allow inclusion of full patient five-digit zip code without population thresholds and inclusion of the month element for all dates directly related to a patient, including date of death but excepting date of birth. This commenter stated that this additional information would empower providers and suppliers to fully evaluate their care and quality improvement efforts on a timely and ongoing basis with insight into geographic and temporal factors and patterns.

Response: The framework for de-identification that is described in the HIPAA Privacy Rule represents an industry standard for de-identification of health information. Additional information on the HIPAA de-identification standards can be found on the HHS Office for Civil Rights Web site at *http://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html.* We believe that modifying this framework for the purposes of the qualified entity program would be likely to create confusion among qualified entities and authorized users, many of whom are or will be HIPAA covered entities or their business associates.

Comment: One commenter noted a technical issue at § 401.716(b)(3) where the text inappropriately referenced § 401.716(c)(2). One commenter suggested CMS clarify whether the data used in the analysis needs to be de-identified at the time of the analysis or whether the analysis itself has to be de-identified at the time it is shared with an authorized user.

Response: We thank the commenter for noting this technical issue and have fixed the reference to § 401.716(b)(2). We would also like to clarify that the data used by the qualified entity to conduct the analyses does not need to be de-identified, but the analyses must be patient de-identified before they are shared with or sold to an authorized user unless the recipient is the patient's provider or supplier.

Comment: We received a number of comments on the definition of a patient. Many commenters stated that the time period of 12 months for a face-to-face or telehealth appointment was not sufficient. One commenter recommended extending the period to 18 months, while several other commenters suggested a timeframe of 24 months. These commenters noted that stabilized patients do not necessarily visit their physician every year. Another commenter suggested that a patient be defined as an individual who has visited the provider or supplier at least once during the timeframe for which the analysis is being conducted.

Response: We acknowledge that healthy patients may not visit a provider or supplier every year. As a result, we are changing the definition of a patient to have a timeframe of the past 24 months for a face-to-face or telehealth appointment.

Comment: One commenter recommended that the definition of a patient be expanded beyond an affiliation with a provider or supplier to an affiliation with an issuer, employer, or state agency or any other authorized user.

Response: As noted above, we believe Section 105(a)(3)(B) of MACRA only permits patient-identifiable information to be shared by a qualified entity with the patient's provider or supplier.

Third, we proposed to bar qualified entities' disclosure of non-public analyses that individually identify a provider or supplier unless: (a) The analysis only individually identifies the singular recipient of the analysis or (b) each provider or supplier who is individually identified in a non-public analysis that identifies multiple providers/suppliers has been afforded an opportunity to review the aspects of the analysis about them, and, if applicable, request error correction. We describe the proposed appeal and error correction process in more detail in section II.A.4 below.

Comment: Several commenters recommended that providers and suppliers should not have the opportunity to review and request error correction for analyses that individually identify the provider or supplier. These commenters noted in particular that analyses identifying fraud or abuse should not be reviewed by the provider in advance of being shared with the authorized user. One commenter suggested that a review and error corrections process for non-public reports only be triggered when a provider or supplier is individually identified and his or her performance is evaluated in the manner described in section 1874(e)(4)(C). Another commenter recommended that when a group of providers are identified as part of a practice group (that is, part of the same Tax Identification Number), and prior consent by the providers has been obtained, the practice group should be considered the entity that can receive analyses for the individual providers in the practice.

Response: We believe that Section 105(a)(6) of MACRA requires that qualified entities allow providers and suppliers an opportunity to review analyses that individually identify the provider or supplier and, if necessary, and, when needed, request error correction in the analyses. In addition, regardless of the statutory requirements, we believe that providers and suppliers should not be evaluated by a qualified entity without having a chance to review and, when needed, request error correction in the analyses. For example, it would not be fair for an issuer to move a provider to a different network tier based on analyses that did not correctly attribute patients to that provider. We recognize that the review and corrections process may lead to some limitations in the development of certain types of analyses, such as those identifying fraud and abuse. However, we believe that creating different standards for different types of analyses would be too administratively complex to implement, and could create tensions between providers and suppliers and qualified entities over whether an analysis warranted review by the provider or supplier before it was shared with an authorized user.

However, we recognize that in many cases providers or suppliers may wish to allow certain authorized users to receive analyses without the need for a review process. For example, clinicians that are part of a group practice may want to allow their practice manager, who may be functioning as the clinician's business associate, to receive analyses without first going through a provider/supplier review or being subject to a request for correction. We believe that the decision about who should be able to receive analyses that individually identify a provider or supplier without such review and opportunity to correct should rest with the individual provider or supplier. As a result, we are adding a third exception to the bar on disclosure of non-public analyses that individually identify a provider or supplier to allow providers or suppliers to designate, in writing, the authorized user(s) that may receive analyses from the qualified entity without first giving the provider or supplier individually identified in the analysis/es the opportunity to review the analyses, and, if applicable, request error correction.

Comment: One commenter recommended that CMS add clarity to what it means to "individually identify" a provider or supplier and stated that the definition should indicate that to individually identify means to use direct identifiers such as name or provider number for a provider or supplier that is an individual person. This commenter suggested that naming a physician group or clinic that is not itself a provider or supplier (but that may be comprised of individual providers or suppliers) would not count as individually identifying a provider or supplier. Another commenter suggested that the review and corrections process only apply to the entity that the analyses focus on. For example, if the qualified entity is conducting analyses of episodes of care for patients with joint replacement at a given hospital, the analyses may include findings on many different providers and suppliers, such as surgeons, skilled nursing facilities, home health agencies, and others. In this case, the commenter recommended that only the hospital be given the opportunity to review and request correction of errors.

Response: Regardless of whether they are an individual clinician, group practice, or facility and regardless of whether they are the direct subject of the report, we believe section 105(a)(6) of MACRA requires that qualified entities allow providers and suppliers the opportunity to review and request correction of errors in analyses that identify the provider or supplier. Group practice and facility-level providers and suppliers, as well as those indirectly evaluated in analyses, face as much reputational harm from the dissemination of incorrect information about care delivery and costs as individual clinicians or those directly evaluated in the analyses. We have added language to clarify this requirement at § 401.716(b)(4).

Comment: One commenter suggested that CMS implement a process to proactively educate providers and suppliers regarding the review, corrections, and appeals process for non-public analyses.

Response: We believe that many qualified entities that decide to disclose analyses that individually identify a provider or supplier will choose to do an education campaign with providers and suppliers in their region to ensure that any necessary review and error correction processes go smoothly. This will allow the qualified entity to build a direct relationship with the provider or supplier. In addition, since providers and suppliers are one of the types of authorized users that qualified entities can provide or sell non-public analyses and data to, we believe that qualified entities will proactively attempt to build strong relationships with the provider and supplier community in their region. As a result, while we see a small role for CMS to play in educating providers and suppliers about the review and error correction process through our usual provider outreach channels, we believe qualified entities will play the main role in provider and supplier education about the review, corrections, and appeals process.

Comment: Several commenters suggested additional limitations that CMS should impose on qualified entities with respect to the disclosure of non-public analyses. One commenter recommended that CMS require qualified entities to provide authorized users with a detailed methodology of statistical analyses to ensure their validity. This commenter also stated that CMS should require qualified entities to follow an appropriate methodology in attributing costs to providers. Another commenter suggested that evaluations of physician performance should be required to have data from at least two sources.

Response: With regard to the suggestions around statistical validity and cost attribution, we believe that these are issues that the qualified entity should discuss directly with the authorized user who is receiving or purchasing the analyses. We expect that most, if not all, authorized users will expect the qualified entity to include some description of the methodology for the analyses along with the report, but that the level of detail and content needed by each authorized user may vary. In addition, authorized users may have different ideas about the most appropriate method for cost attribution and we believe that they should be able to work with the qualified entity to make a determination for how to attribute costs to providers and suppliers. On the issue of requiring at least two sources of data, we believe that section 105(a)(1)(A) of MACRA requires that the non-public analyses be based on the combined data described in 1874(e)(4)(B)(iii) as "data made available under this subsection with claims data from sources other than claims data under this title".

3. Limitations on the Authorized User

We proposed to require the qualified entity's use of legally binding agreements with any authorized users to whom it provides or sells non-public analyses. For non-public analyses that only include patient de-identified data, we proposed to require the qualified entity to enter into a contractually binding non-public analyses agreement with any authorized users as a pre-condition to providing or selling such non-public analyses.

Comment: Several commenters stated that they supported the use of a legally binding agreement between the qualified entity and the authorized user. One commenter suggested that CMS develop a standard non-public analyses agreement for qualified entities to use with authorized users.

Response: We thank commenters for their support of this proposal. We believe that many qualified entities will have existing agreements with authorized users that cover the use and disclosure of analyses related to their claims data from other sources. While there may be some value in providing organizations new to this type of work a template for the agreement, we believe that qualified entities would be better served by engaging with their own legal counsel to ensure the agreement meets their specific needs.

For non-public analyses that include patient identifiable data, we proposed to require the qualified entity to enter into a qualified entity Data Use Agreement (QE DUA) with any authorized users as a pre-condition to providing or selling such non-public analyses. As we also proposed to require use of the QE DUA in the context of the provision or sale of combined data, or the provision of Medicare data at no cost, we discuss our proposals related to the QE DUA and associated comments in the data disclosure discussion in section II.B below.

Requirements in the Non-Public Analyses Agreement

The statute generally allows qualified entities to provide or sell their non-public analyses to authorized users for non-public use, but it bars use or disclosure of such analyses for marketing (see section 105(a)(3)(c) of MACRA). We proposed additional limits on the non-public analyses, given the expansive types of non-public analyses that could be conducted by the qualified entities if no limits are placed on such analyses, and the potential deleterious consequences of some such analyses.

First, we proposed that the non-public analyses agreement require that non-public analyses conducted using combined data or the information derived from the evaluations described in section 1874(e)(4)(D) of the Act may not be used or disclosed for the following purposes: Marketing, harming or seeking to harm patients and other individuals both within and outside the healthcare system regardless of whether their data are included in the analyses (for example, an employer using the analyses to attempt to identify and fire employees with high healthcare costs), or effectuating or seeking opportunities to effectuate fraud and/or abuse in the healthcare system (for example, a provider using the analyses to identify ways to submit fraudulent claims that might not be caught by auditing software). We also proposed to adopt the definition of marketing at 45 CFR 164.501 in the HIPAA Privacy Rule.

Comment: Many commenters stated that they supported the proposed restrictions on the use of the non-public analyses. One commenter suggested that CMS provide greater clarification on what would constitute harm to patients and other individuals both within and outside the healthcare system. This commenter suggested that harm should include activities that would create overly tiered networks that could exclude high quality providers, as well as efforts to limit patient access to certain treatments or drugs or steer patients to certain practices based solely on cost.

Response: We thank commenters for their support of the restrictions on the use of the analyses. On further consideration, we agree that the industry may benefit from additional guidance regarding these restrictions. Therefore, we anticipate providing additional sub-regulatory guidance on the standards adopted in this rule for the Qualified Entity Certification Program Web site at *https://www.qemedicaredata.org/SitePages/home.aspx.*

As we did not receive any comments on the proposed definition of marketing, we will finalize the definition without modification.

Second, in accordance with section 105(a)(1)(B)(i) of MACRA, we proposed to require that any non-public analyses provided or sold to an employer may only be used by the employer for the purposes of providing health insurance to employees and retirees of the employer. We also further proposed that if the qualified entity is providing or selling non-public analyses to an employer that this requirement be included in the non-public analyses agreement. We did not receive any comments on this proposal, so are finalizing it without modification.

We also proposed to require qualified entities to include in the non-public analysis agreement a requirement to limit re-disclosure of non-public analyses or derivative data to instances in which the authorized user is a provider or supplier, and the re-disclosure is as a covered entity would be permitted under 45 CFR 164.506(c)(4)(i) or 164.502(e)(1). Accordingly, a provider or supplier may only re-disclose -identifiable health information to a covered entity for the purposes of the covered entity's quality assessment and improvement or for the purposes of care coordination activities, where that entity has a patient relationship with the individual who is the subject of the information, or to a business associate of such a covered entity under a written contract. We also generally proposed to require qualified entities to use a non-public analyses agreement to explicitly bar authorized users that are not providers or suppliers from re-disclosure of the non-public analyses or any derivative data except to the extent a disclosure qualifies as a "required by law" disclosure.

Comment: Several commenters suggested that authorized users be allowed to re-disclose analyses in order to publish research findings provided the analyses do not individually identify a provider. These commenters noted that public health interests can be served by allowing the disclosure of research findings to the public. One commenter recommended allowing broad re-disclosure of analyses when the information is beneficiary de-identified, stating that this is necessary to reduce cost and improve patient care across the healthcare system. Several commenters suggested that authorized users be allowed to re-disclose analyses for the purposes of developing products or services, such as analytic tools, algorithms, and other innovations for improving health outcomes.

Response: The statutory language at section 105(a)(5) of MACRA states that authorized users may not re-disclose or make public any analyses, with the exception of allowing providers and suppliers to re-disclose analyses, as determined by the Secretary, for the purposes of care coordination and performance improvement activities. As a result, we are finalizing the proposed language on re-disclosure of analyses without modification. However, we would like to note that CMS currently makes data available to researchers outside of this qualified entity program, including those interested in developing products or tools. Individuals and organizations interested in accessing CMS data for research purposes should visit the Research Data Assistance Center (ResDAC) at *www.resdac.org* for more information.

Fourth, we proposed to require qualified entities to impose a legally enforceable bar on the authorized user's linking de-identified analyses (or data or analyses derived from such non-public analyses) to any other identifiable source of information or in any other way attempting to identify any individual whose de-identified data is included in the analyses or any derivative data.

Comment: One commenter stated that an authorized user should be allowed to link the analyses that contain patient identifiers or any derivative data with other sources when this information is limited to their own patients.

Response: We would like to highlight that the restriction on linking analyses only applies to de-identified analyses. To the extent providers and suppliers are receiving identifiable information on their own patients, the restriction on linking to any other identifiable source of information does not apply.

Finally, we proposed to require qualified entities to use their non-public analyses agreements to bind their non-public analyses recipients to reporting any violation of the terms of that non-public analyses agreement to the qualified entity. We did not receive any comments on this proposal, so are finalizing it without modification.

4. Confidential Opportunity To Review, Appeal, and Correct Analyses

In accordance, with section 105(a)(6) of MACRA, we proposed that the qualified entity must follow the confidential review, appeal, and error correction requirements established at 401.717(f) under section 1874(e)(4)(C)(ii) of the Act.

Comment: We received a wide-ranging set of comments on the proposed review and corrections process. Several commenters supported the proposed review and corrections process. Many commenters suggested changes to the review process for non-public analyses. In general these commenters cited the burden of the proposed process for qualified entities and recommended options to make the process less burdensome. However, other commenters focused on the need for providers and suppliers to have enough time to ensure the analyses are accurate.

Several commenters suggested provider or supplier notification as the first step for review of non-public analyses. One commenter recommended creating an alternative approach to individualized appeals, such as an accreditation process. Another commenter suggested that when a non-public analysis is released to one or more authorized users, or when a non-public analysis is subsequently used for a public report, the qualified entity need only provide an opportunity for the provider or supplier to have reviewed and, if necessary, requested error correction once before the initial release of the analysis. Another commenter recommended that providers and suppliers only be given one chance to request error correction of the underlying data, after which the data could be used in any future non-public analyses.

A few commenters suggested that a 60-day period to review the analyses may not be sufficient. On the other hand, several commenters suggested a 30-day review period for non-public analyses, while another commenter suggested giving providers and suppliers an ongoing right to review the analyses and request error correction.

Response: We appreciate commenters' concerns about allowing providers and suppliers the necessary time to review analyses as well as the concerns about the burden on qualified entities of implementing the public reporting review and corrections process for non-public analyses. However, as noted in the proposed rule, we also believe using the same process for review and error correction for both the non-public analyses and the public reports creates continuity and a balance between the needs and interests of providers and suppliers and those of the qualified entities, authorized users, and the public.

That said, on further consideration, we believe that the addition of a procedural step whereby the qualified entity would confidentially notify a provider or supplier about the non-public analyses and give the provider or supplier the opportunity to opt-in to the review and error correction process established at § 401.717(a) through (e) is both consistent with the statute and has the potential to reduce the burden on both qualified entities and providers and suppliers. In some cases, notification may be sufficient to meet the needs of a provider or supplier and, as a result, the provider or supplier will choose not to opt-in to the review and correction process, reducing the paperwork and resource burden for both the qualified entity and the provider/supplier. In addition, where the analyses are similar to previous analyses or use data the provider or supplier has already corrected, the provider or supplier may also choose not to review the analyses.

Under this procedural step, a qualified entity must confidentially notify a provider or supplier that non-public analyses that individually identify the provider or supplier are going to be released at least 65 calendar days before disclosing the analyses to the authorized user. The first five days of the 65 day period is intended to allow time to notify the provider or supplier, and to allow them time to respond to the qualified entity. The next sixty days are reflective of the sixty day review period in § 401.717(a) through (e). The confidential notification about the non-public analyses should include a short summary of the analyses (which must include the measures being calculated, but does not have to include the methodologies and measure results), the process for the provider or supplier to request the analyses, the authorized users receiving the analyses, and the date on which the qualified entity will release the analyses to the authorized users. This notification can cover multiple non-public analyses that use different datasets and measures. The 65-day period begins on the date the qualified entity sends or emails the notification to providers and suppliers. As we presume some qualified entities may utilize National Provider Identifier (NPI) data as a means of contacting providers and suppliers, we would like to use this opportunity to remind providers and suppliers of the need to keep their NPI information up-to-date.

At any point during this 65-day period, the qualified entity must allow the provider or supplier to opt-in to the review and error correction process established at § 401.717(a) through (e) and request copies of the analyses and, where applicable, access to the data used in the analyses, and to request the correction of any errors in the analyses. However, if the provider or supplier chooses to opt-in to the review and correction process more than 5 days into the notification period, the time for the review and correction process is shortened from regulatory 60 days in § 401.717(a) through (e) to the number of days remaining between the provider or supplier opt-in date and the release date specified in the confidential notification.

We understand the desire to create an alternative approach to individualized appeals, such as an accreditation process, however, we believe the statutory language at Section 105(a)(6) of MACRA requires that qualified entities allow providers and suppliers an opportunity to review analyses that individually identify the provider or supplier and, if necessary, and, when needed, request error correction in the analyses. In addition, as stated above, regardless of the statutory requirements, we believe that providers and suppliers should not be evaluated by a qualified entity without having a chance to review and, when needed, request error correction in the analyses.

Comment: One commenter recommended that qualified entities not be allowed to provide or sell analyses to an authorized use while an error correction request is outstanding.

Response: We acknowledge the interest of providers and suppliers in ensuring that any analyses correctly represent their care delivery patterns and costs. However, we are concerned that providers and suppliers may make spurious requests for error correction in order to prevent the authorized user from receiving the analyses. As a result, we will maintain the provisions that allow qualified entities to release the non-public analyses after the 65-day period regardless of the status of error corrections. As with the public reporting, the qualified entity must inform the authorized user if a request for error correction is outstanding when the analyses are delivered to the authorized user, and, if applicable, provide corrected analyses if corrections are ultimately made.

B. Dissemination of Data and the Use of QE DUAs for Data Dissemination and Patient-Identifiable Non-Public Analyses

Subject to other applicable law, section 105(a)(2) of MACRA expands the permissible uses and disclosures of data by a qualified entity to include providing or, where applicable, selling combined data for non-public use to certain authorized users, including providers of services, suppliers, medical societies, and hospital associations for use in developing and participating in quality and patient care improvement activities. Section 105(a)(3)(B) of MACRA. Subject to the same limits, it also permits a qualified entity to provide Medicare claims data for non-public use to these authorized users; however, a qualified entity may not charge a fee for providing such Medicare claims data. In addition, in order to provide or sell combined data or Medicare data, section 105(a)(4) of MACRA instructs the qualified entity to enter into a DUA with their intended data recipient(s).

1. General Requirements for Data Dissemination

To implement the provisions in Section 105(b) of MACRA, we proposed to provide that, subject to other applicable laws (including applicable information, privacy, security and disclosure laws) and certain defined program requirements, including that the data be used only for non-public purposes, a qualified entity may provide or sell combined data or provide Medicare claims data at no cost to certain authorized users, including providers of services, suppliers, medical societies, and hospital associations. Where a qualified entity is a HIPAA-covered entity or is acting as a business associate, compliance with other applicable laws will include the need to ensure that it fulfills the requirements under the HIPAA Privacy Rule, including the restriction on the sale of PHI at 45 CFR 164.502(a)(5)(ii).

Comment: Several commenters stated that CMS should provide additional clarity on the term no cost as it relates to the provision of Medicare data. For example, commenters stated that qualified entities may wish to charge a fee for entering into a data use agreement with an authorized user, but then not charge for the data. In addition, some of these commenters recommended that CMS allow qualified entities to recoup the costs associated with providing Medicare data at no cost. These commenters stated that there is a cost associated with providing claims data to authorized users, such as staff time to create the data extract and encrypt the file.

Response: We understand that qualified entities will face costs providing Medicare data to authorized users. However, section 105(a)(2)(C) of MACRA expressly states that, if a qualified entity were to elect to make Medicare claims data available, such data must be "provided" at no cost. We believe that the paperwork and processing costs associated with accepting and fulfilling Medicare claims data requests are an integral part of the "provision" of data. As such, qualified entities may not charge authorized users for the Medicare data itself or any activity associated with requests for or the fulfillment of Medicare data requests (such as the processing of a data use agreement). However, we also note that the qualified entity is not required to offer authorized users the opportunity to request Medicare claims data. Qualified entities may choose to only offer authorized users the opportunity to receive or purchase combined data. Qualified entities may also choose not to allow authorized users to request data at all.

Comment: One commenter suggested that CMS require qualified entities to sell the combined data at a reasonable price which reflects their actual cost.

Response: We appreciate the commenter's interest in ensuring qualified entities charge authorized users reasonable fees for combined data. However, we believe that qualified entities should be allowed to determine the appropriate fee to charge authorized users for access to the combined data. If qualified entities set their prices too high authorized users have the choice of not buying the data, or potentially obtaining the data from another qualified entity with more reasonable pricing.

Comment: One commenter recommended that CMS provide additional clarity on the threshold for the amount of other data that must be combined with the Medicare data in order for the qualified entity to sell the combined data.

Response: As discussed above, we have not established a threshold for the amount of other data that must be combined with the Medicare data. It is our expectation that qualified entities will use sufficient claims data from other sources to ensure validity and reliability.

2. Limitations on the Qualified Entity Regarding Data Disclosure

In accordance with section 105(a)(2), we proposed to place a number of limitations on the sale or provision of combined data and the provision of Medicare claims data by qualified entities, including generally barring the disclosure of patient-identifiable data obtained through the qualified entity program.

Comment: Several commenters stated that CMS should provide additional clarity around whether the data must go through a review and corrections process before it is disclosed to an authorized user. One commenter recommended that providers and suppliers be allowed to review, appeal, and correct the data before it is disclosed.

Response: Section 105(a)(6) of MACRA only requires a review and corrections process when a qualified entity is providing or selling an analysis to an authorized user. While we understand that some providers and suppliers may wish to ensure that their data is correct before it is shared with an authorized user, we believe that this process would be very rigorous and burdensome for the qualified entity and would have little value for most providers and suppliers.

We proposed to require any combined data or Medicare claims data that is provided to an authorized user by a qualified entity under subpart G be beneficiary de-identified in accordance with the de-identification standards in the HIPAA Privacy Rule at 45 CFR 164.514(b). We also proposed an exception that would allow a qualified entity to provide or sell patient-identifiable combined data and/or provide patient-identifiable Medicare claims data at no cost to an individual or entity that is a provider or supplier if the provider or supplier has a patient relationship with every patient about whom individually identifiable information is provided and the disclosure is consistent with applicable law.

Comment: Several commenters agreed with the proposal to only allow identifiable data to be disclosed to providers or suppliers with whom the identified individuals have a patient relationship. One commenter suggested that qualified entities be allowed to share limited data sets (as defined in HIPAA) with providers and suppliers for individuals who are not their patients. Another commenter recommended that qualified entities be allowed to disclose patient-identifiable data to health plans.

Response: Section 105(a)(3) of MACRA requires that data disclosed to an authorized user not contain information that individually identifies a patient unless the data is being shared with that patient's provider or supplier. We further note that limited data sets include indirect identifiers, and, as such, are subject to that mandate. While we can imagine that health systems would be interested in conducting population-wide analyses that look at disease incidence or care delivery patterns, we believe these types of analyses can be conducted using de-identified data. In addition, authorized users that may not receive patient-identifiable data, such as issuers, could ask the qualified entity to conduct analyses on these topics, and purchase or receive the patient-deidentified analyses that result from such efforts.

Second, we proposed to require qualified entities to bind the recipients of their data to a DUA that will govern the use and, where applicable, re-disclosure of any data received through this program prior to the provision or sale of such data to an authorized user.

Comment: Several commenters stated that they agreed with the proposal to require qualified entities to bind authorized users who receive data to a DUA. One commenter recommended that when the required "QE DUA" (the DUA between the Qualified Entity (QE) and the Authorized User) provisions already exist in another contract between the qualified entity and the authorized user, the qualified entity should not be required to re-paper those terms.

Response: We thank commenters for their support of this proposal. In cases where all the terms of the QE DUA at § 401.713(d) are contained in a contractually binding agreement between the qualified entity and the authorized user, we do not intend to require the qualified entity to re-paper that agreement as a QE DUA.

3. Data Use Agreement (DUA)

A qualified entity must enter a DUA with CMS as a condition of receiving Medicare data. Furthermore, in accordance with Section 105(a)(4) of MACRA, we proposed to require the execution of a DUA as a precondition to a qualified entity's provision or sale of data to an authorized user. As discussed above, we also proposed to require the qualified entity to enter into a DUA with any authorized user as a pre-condition to providing or selling non-public analyses that include patient-identifiable data. To help differentiate the DUA between CMS and the qualified entity from the DUAs between the qualified entity and the authorized user, we proposed certain clarifying changes that recognize that there are now two distinct DUAs in the qualified entity program—the CMS DUA, which is the agreement between CMS and a qualified entity, and what we will refer to as the QE DUA, which will be the legally binding agreement between a qualified entity and an authorized user.

Comment: Several commenters had overall comments on the QE DUA. One commenter recommended that CMS create a standard QE DUA. Another commenter stated that the data released to authorized users should not be subject to discovery or admitted into evidence without the provider or supplier's consent. A few commenters suggested that the QE DUA include a provision that prevents the disclosure of competitively sensitive data, such as Part D bid information. Finally, one commenter suggested that authorized users should have some direct responsibility for actions that run afoul of contractual requirements.

Response: As noted above, qualified entities may have existing agreements with authorized users where all required QE DUA elements are covered, and we are not requiring re-papering in those instances. Furthermore, also as noted above, we believe that qualified entities without existing agreements would be better served by engaging with their own legal counsel to ensure the QE DUA meets their specific needs.

As discussed above, we believe the statutory requirement that data not be subject to discovery or admitted into evidence without the provider or supplier's consent only applies to data released to the qualified entity under 1874(e) and when that data is in the possession of the qualified entity.

Regarding concerns about disclosure of competitively sensitive information, qualified entities only receive Medicare Parts A and B claims data and certain Part D drug event data from CMS. In addition, we only provide qualified entities with aggregated Part D cost information, not the proprietary individual component costs. As a result, we do not believe there is a risk that qualified entities would be in a position to disclose competitively sensitive information to authorized users.

Finally, as we stated in the proposed rule, we only have authority to impose requirements on the qualified entity. As a result, we must rely on the qualified entity to impose legally enforceable obligations on the authorized user.

Requirements in the QE DUA

In § 401.713(d), we proposed a number of contractually binding provisions that would be included in the QE DUA. First, we proposed to require that the QE DUA contain certain limitations on the authorized user's use of the combined data and/or Medicare claims data and/or non-public analyses that contain patient-identifiable data and/or any derivative data (hereinafter referred to as data subject to the QE DUA) to those purposes described in the first or second paragraph of the definition of "healthcare operations" under 45 CFR 164.501, or that which qualifies as "fraud and abuse detection or compliance activities" under 45 CFR 164.506(c)(4). We also proposed to require that all other uses and disclosures of data subject to the QE DUA be prohibited except to the extent a disclosure qualifies as a "required by law" disclosure. We did not receive any comments on our proposal to allow authorized users to use the data subject to the QE DUA for the purposes described in the first or second paragraph of the definition of "healthcare operations" under 45 CFR

164.501. Therefore, we are finalizing our proposal. In doing so, we identified inadvertent drafting errors in the proposed regulatory text at § 401.713(d)(1)(i)(A) and (B) (mis-identifying which activities fell into which paragraphs of 45 CFR 164.501). We have therefore corrected those draft regulatory provisions to conform the new 42 CFR 401.713(d)(1)(i)(A) and (B) with the content of the first and second paragraphs of the definition of health care operations under 45 CFR 164.501.

Comment: We received several comments on allowing authorized users to use the data subject to the QE DUA for purposes which qualify as "fraud and abuse detection or compliance activities" under 45 CFR 164.506(c)(4). Several commenters stated that the allowing use of the data subject to the QE DUA for fraud and abuse detection is unwarranted and without basis in the statutory text. However, another commenter explicitly supported use of the data subject to the QE DUA to bolster efforts to fight fraud. One commenter suggested the addition of "waste" detection as an allowed use of the data subject to the QE DUA.

Response: We believe that section 105(a)(3)(A)(ii) of MACRA is illustrative (providing for certain non-public uses "including" certain cross-referenced activities). It does not prevent use of the data for fraud and abuse detection and compliance activities. As a result, we are finalizing our proposal to allow authorized users to use the data subject to the QE DUA for fraud and abuse detection. While we can understand the interest in adding waste detection to the list of allowed uses of the data subject to the QE DUA, we believe it is best to stay consistent with the language established in HIPAA since many of other authorized users receiving data subject to the QE DUA are also HIPAA covered entities.

Comment: One commenter suggested that authorized users also be allowed to use the data subject to the QE DUA for "treatment" as defined under 45 CFR 164.501.

Response: We agree that use of the data subject to the QE DUA for treatment purposes is a valid possible use of the data and consistent with the statute. As a result, we have modified the language at § 401.713(d)(1)(i) to include treatment.

We also proposed to require qualified entities to use the QE DUA to contractually prohibit the authorized users from using the data subject to the QE DUA for marketing purposes. We did not receive any comments on this proposal, and are finalizing it without modification.

We proposed at § 401.713(d)(3) to require qualified entities to contractually bind authorized users using the QE DUA to protect patient-identifiable data subject to the QE DUA, with at least the privacy and security protections that would be required of covered entities and their business associates under the HIPAA Privacy and Security Rules. We proposed to require that the QE DUA contain provisions that require that the authorized user maintain written privacy and security policies and procedures that ensure compliance with these HIPAA-based privacy and security standards and the other standards required under this subpart for the duration of the QE DUA. We also proposed to require QE DUA provisions detailing such policies and procedures survive termination of the QE DUA, whether for cause or not.

Comment: One commenter suggested that CMS clarify that the QE DUA by itself does not make the authorized user a covered entity or business associate under HIPAA if the authorized user does not otherwise meet those definitions.

Response: We wish to clarify that this rule does not comment on whether an entity is a covered entity or business associate under HIPAA. We are simply requiring the authorized users to comply with the privacy and security protections required of covered entities and their business associates under the HIPAA Privacy and Security Rules (that is, the authorized users must comply with those provisions as if they were acting in the capacity of a covered entity or business associate dealing with protected health information). We feel that such standards represent an industry-wide standard for the protection of patient-identifiable data, and note that this requirement would be in keeping with section 105(a)(4) of MACRA.

We also proposed at § 401.713(d)(7) to require that the qualified entity use the QE DUA to contractually bind an authorized user as a condition of receiving data subject to the QE DUA under the qualified entity program to notify the qualified entity of any violations of the QE DUA. We did not receive any comments on this proposal, so are finalizing it without modification.

In addition, we proposed at § 401.713(d)(4) to require that the qualified entity include a provision in its QE DUAs that prohibits the authorized user from re-disclosing or making public data subject to the QE DUA except as provided in paragraph (d)(5). We proposed at § 401.713(d)(5) to require that the qualified entity use the QE DUA to limit provider's and supplier's re-disclosures to a covered entity pursuant to 45 CFR 164.506(c)(4)(i) or 164.502(e)(1). Therefore, a provider or supplier would generally only be permitted to re-disclose data subject to the QE DUA to a covered entity or its business associate for activities focused on that covered entity's quality assessment and improvement, including the review of provider or supplier performance. We also proposed to require re-disclosure when required by law.

Comment: Several commenters stated that they supported CMS' proposals related to re-disclosure of data. One commenter suggested that providers and suppliers be allowed to re-disclose data for direct patient care and issues of patient safety. Another commenter recommended that any authorized user be allowed to re-disclose de-identified data for the purposes of publishing de-identified statistical results.

Response: We thank commenters for their support of the re-disclosure proposals. While we can understand interest in explicitly referencing issues of patient safety, we do not believe it is necessary given that the first paragraph of the definition of healthcare operations includes patient safety activities and, thus issues of patient safety are permitted reasons for re-disclosure of the data. However, we recognize that as proposed, providers and suppliers would not be allowed to re-disclose the data subject to the QE DUA for treatment purposes. As a result, we are modifying the language at § 401.713(d)(5)(i) to allow providers and suppliers to re-disclose data subject to the QE DUA as a covered entity would be permitted to disclose PHI under 45 CFR 164.506(c)(2), which allows a covered entity to disclose data for the treatment activities of a healthcare provider.

Regarding the recommendation to allow for re-disclosure of de-identified data in order to publish statistical results, we do not believe that this purpose is consistent with section 105(a)(5)(A) of the MACRA statute, which explicitly states that an authorized user who is provided or sold data shall not make public such data or any analysis using such data.

We also proposed to require qualified entities to impose a contractual bar using the QE DUA on the downstream recipients' linking of the re-disclosed data subject to the QE DUA to any other identifiable source of information. The only exception to this general policy would be if a provider or supplier were to receive identifiable information limited to its own patients.

Comment: Several commenters stated that they supported the proposals related to linking the data. One commenter suggested that business associates of providers or suppliers be allowed to link the data subject to the QE DUA. Another commenter recommended that authorized users be allowed to link the patient de-identified data so long as the intent or result is not to re-identify patients and the resulting data set meets the HIPAA standard for de-identification.

Response: We would like to clarify that the prohibition on linking only applies to patient de-identified data subject to the QE DUA. To the extent that a provider or supplier receives patient-identifiable data subject to the QE DUA and discloses that data to a business associate as allowed under § 401.713(d)(5)(i), that provider or supplier may request that the business associate link the data subject to the QE DUA to another data source.

While we understand that some authorized users may wish to link the de-identified data subject to the QE DUA, we believe that this creates too much risk of inadvertent re-identification. However, instead of linking the data themselves, authorized users could choose to share their additional data, in accordance with applicable law, with the qualified entity who could link this new data source to the existing data and then create de-identified analyses to share with the authorized user.

C. Authorized Users

1. Definition of Authorized User

Section 105(a)(9)(A) of MACRA defines authorized users as: A provider of services, a supplier, an employer (as defined in section 3(5) of the Employee Retirement Insurance Security Act of 1974), a health insurance issuer (as defined in section 2791 of the Public Health Service act), a medical society or hospital association, and any other entity that is approved by the Secretary. We proposed a definition for authorized user at § 401.703(k) that is consistent with Section 105(a)(9)(A) of MACRA and includes two additional types of entities beyond those established in the statute—healthcare professional associations and state agencies. Specifically, we proposed to define an authorized user as: (1) A provider; (2) a supplier; (3) an employer; (4) a health insurance issuer; (5) a medical society; (6) a hospital association; (7) a healthcare professional association; or (8) a state agency.

Comment: Commenters had a wide ranging list of suggested additions to the definition of an authorized users, including: Other types of associations and partnership groups whose missions support the permitted data uses, entities with expertise in quality measure development, organizations engaged in research, federal agencies, regional health improvement collaboratives, and the Indian Health Service (and Indian Health programs). Several commenters also suggested that CMS create a process for qualified entities to seek approval for additional authorized users that may not fit into the regulatory definitions.

Response: We recognize that many organizations are interested in accessing analyses provided by the qualified entity. However, CMS believes we must maintain a carefully curated list of authorized users to prevent the monitoring of the qualified entity program from becoming too cumbersome. As a result, we are only adding federal agencies, including, but not limited to the Indian Health Service (and Indian Health programs), to the definition of authorized users. Similar to state agencies, we believe that federal agencies, particularly those that provide healthcare services such as the Indian Health Service and the U.S. Department of Veteran Affairs are important partners with CMS in transforming the healthcare delivery system and could substantially benefit from access to analyses to help improve quality and reduce costs, especially for individuals who utilize their services. On the other hand, we believe many of the other suggested authorized users do not represent well defined groups, which could lead to significant confusion as to which entities fall within the group and which do not. In addition, as we noted above, the statute is explicit in its prohibition of releasing the analyses or data to the public, so the addition of any authorized user with a research aim is not consistent with the parameters of the program.

We believe a separate approval process would be very costly for CMS and create additional burdens for qualified entities. We also believe that a standard list of authorized users is the simplest and least administratively burdensome method to ensure equal treatment of qualified entities. Because many of the suggested authorized users do not represent well defined groups, we would envision an approval process for each entity requesting analyses, which would potentially be more burdensome for smaller regional qualified entities that do not have the time or resources to devote to the approval process. Furthermore, we have an existing process through which entities can obtain Medicare data for research purposes. More information on accessing CMS data for research can be found on the ResDAC Web site at *www.resdac.org.*

Comment: Several commenters suggested that other organizations beyond providers, suppliers, hospital associations, and medical societies be allowed to access data. A few commenters suggested any entity should be allowed to access de-identified data. Another commenter recommended the creation of a new authorized user called a healthcare provider or supplier collaborator and defined as an organization or entity that does not directly treat patients, but works closely with the provider or supplier in connection with treatment of patients.

Response: Section 105 (a)(2)(A)(i) only allows for the disclosure of data to a provider of services, a supplier, and a medical society or hospital association.

Comment: Several commenters suggested that authorized users that are allowed to act on behalf of their subparts (for example, Accountable Care Organizations) or business associates as defined in HIPAA should be allowed to receive data and/or analyses directly.

Response: We do not intend to prevent organizations acting under a contract with an authorized user from receiving data or the analyses on behalf of the authorized user. Therefore, we have modified the definition of authorized user to include contractors, including, where applicable, business associates as that term is defined at 45 CFR 160.103. An authorized user is now defined as a third party and its contractors (including, where applicable, business associates as that term is defined at 45 CFR 160.103) that need analyses or data covered by this section to carry out work on behalf of that third party (meaning not the qualified entity or the qualified entity's contractors) to whom/which the qualified entity provides or sells data as permitted under this subpart. Authorized user third parties are limited to the following entities: A provider, a supplier, a medical society, a hospital association, an employer, a health insurance issuer, a healthcare provider and/or supplier association, a state entity, a federal agency.

We would like to note that with this change to the definition of authorized user a qualified entity is now also liable for the actions of the third party's contractors who enter into a QE DUA with the qualified entity.

Comment: One commenter suggested a modification to the definition of provider to include dieticians, social workers, case management nurses, and other allied health professionals.

Response: The current definition of a supplier is a physician or other practitioner that furnishes healthcare services under Medicare. To the extent that dieticians, social workers, case management nurses, and other allied health professionals are furnishing healthcare services under Medicare, they would already be considered suppliers. If they are not furnishing services under Medicare, we do not believe the analyses or data based on Medicare claims data will hold much value for improving care delivery or reducing costs, and so we decline expanding the definition to include them.

2. Definition of Employer

We proposed to define an employer as having the same meaning as the term "employer" defined in Section 3(5) of the Employee Retirement Insurance Security Act of 1974.

Comment: One commenter suggested that the definition of employer should not include any third-party consultant or wellness program vendors.

Response: As noted above, we believe authorized users should be allowed to share analyses and data with contractors who need such information to conduct work on their behalf. Therefore, we modified the definition of authorized user to include contractors. To the extent a wellness vendor is an employer's contractor, the vendor will be required to sign a non-public analyses agreement and will be bound to only use and disclose the analyses in a manner consistent with the provisions of that agreement. We would also like to point out that as specified in § 401.716(c)(2), employers, and their contractors, may only use the analyses for the purposes of providing health insurance to employees, retirees, or dependents of employees.

3. Definition of Health Insurance Issuer

We proposed to define a health insurance issuer as having the same meaning as the term "health insurance issuer" defined in Section 2791(b)(2) of the Public Health Service Act.

Comment: One commenter suggested that the definition of health insurance issuer should not include any third-party consultant or wellness program vendors.

Response: As with employers, we believe issuers should be allowed to share analyses and data with contractors who need such information to conduct work on their behalf. Therefore, as stated above, we have modified the definition of authorized user. To the extent a wellness vendor is an issuer's contractor, the vendor will be required to sign a non-public analyses agreement and will be bound to only use and disclose the analyses in a manner consistent with the provisions of that agreement.

4. Definition of "Medical Society"

We proposed to define a medical society as a non-profit organization or association that provides unified representation for a large number of physicians at the national or state level and whose membership is comprised mainly of physicians.

Comment: One commenter requested that CMS provide an example of a medical society.

Response: We would consider the American Medical Association or the American Academy of Family Physicians to be national-level medical societies. At the state-level, the Medical Association of the State of Alabama is an example of a medical society under this definition.

5. Definition of "Hospital Association"

We proposed to define a hospital association as a non-profit organization or association that provides unified representation for a large number of hospitals or health systems at the national or state level and whose membership is comprised of a majority of hospitals and health systems.

Comment: One commenter requested that CMS provide an example of a hospital association.

Response: We would consider the American Hospital Association or the Federation of American Hospitals to be national hospital associations. At the state-level, the Hospital and Healthsystem Association of Pennsylvania is an example of a hospital association under this definition.

Comment: Several commenters suggested that the definition of hospital association be expanded to include associations at the local level and quality organizations that are affiliated with, but have separate 501(c)(3) numbers from their state hospital association.

Response: CMS recognizes that local hospital associations may work more closely on issues such as quality improvement with hospitals and health systems in their area than state or national associations. As a result, we have modified the definition of hospital association to include local-level organizations. However, we do not believe that the MACRA statute at 105(a)(9)(v) intends for quality organizations affiliated with a hospital association to be considered a hospital association since the language only refers to hospital association and does not reference quality organizations. To the extent that these quality organizations are doing work on behalf of the state hospital association under contract, and that work requires access to such data or analyses, these quality organizations would be considered authorized users and would be required to enter into a QE DUA and/or non-public analyses agreement with the qualified entity.

6. Definition of "Healthcare Provider and/or Supplier Association"

We proposed to define a healthcare provider and/or supplier association as a non-profit organization or association that represents providers and suppliers at the national or state level and whose membership is comprised of a majority of providers and/or suppliers. We did not receive any comments on this definition, so are finalizing it without modification.

7. Definition of "State Agency"

We proposed to define a state agency as any office, department, division, bureau, board, commission, agency, institution, or committee within the executive branch of a state government.

Comment: One commenter stated that state agencies should be limited to those entities that promote care quality and patient care improvement activities. Another commenter recommended that the term state agency be changed to state entity to help avoid conflict with state-specific references to the word "agency." One commenter suggested CMS provide clarity on whether the definition of state agency includes political subdivisions of the state.

Response: We do not believe that state agencies should be limited to those entities focused on care quality and patient care improvement. There are a wide-array of uses of the non-public analyses by states who are CMS' partners in transforming the healthcare delivery system. We do appreciate the comment related to the use of the term agency at the state-level, and have modified this term in the regulations to be "state entity." In addition, to provide clarity, we note that we did not intend for the definition of state agency to include political subdivisions of a state, such as a county, city, town, or village, and as a result have not added these to the definition.

D. Annual Report Requirements

1. Reporting Requirements for Analyses

Section 105(a)(8) of MACRA expands the information that a qualified entity must report annually to the Secretary if a qualified entity provides or sells non-public analyses. Therefore, consistent with these requirements, we proposed to require that the qualified entity provide a summary of the non-public analyses provided or sold under this subpart, including specific information about the number of analyses, the number of purchasers of such analyses, the types of authorized users that purchased analyses, the total amount of fees received for such analyses. We also proposed to require the qualified entity to provide a description of the topics and purposes of such analyses. In addition, we proposed to require a qualified entity to provide information on QE DUA and non-public analyses agreement violations.

Comment: Several commenters suggested additions to the reporting requirements for analyses. One commenter suggested that qualified entities include the specific entities to whom analyses were provided or sold as well as more detailed pricing information. Another commenter recommended the addition of the frequency and nature of requests for error correction, and how often analyses are disclosed with unresolved requests for error correction.

Response: We believe that Section 105(a)(8)(A) of MACRA intends for qualified entities to provide a summary of the analyses and that the specific details of the entities who received analyses or the pricing information for analyses are not consistent with that intent. We do believe there is value in monitoring requests for error correction to ensure that qualified entities are not releasing analyses that consistently have requests for error correction, which could indicate a qualified entities' poor use of the Medicare data; however, we believe the requirement to provide this information, with the exception of how often analyses are disclosed with unresolved requests for error correction, already exists as part of the annual reporting requirements under § 401.719(b)(2). We believe including how often analyses are disclosed with unresolved error requests in the annual reports is important because it allows CMS to track possible poor use of the Medicare data by qualified entities. Therefore, we have added the requirement to report the number of analyses disclosed with unresolved requests for error correction at § 401.719(b)(3)(iii).

Comment: One commenter suggested that the annual reports be made public.

Response: We recognize that in some cases the annual reports may contain sensitive commercial information and, as a result, we do not believe the reports should be made public. We would like to clarify, however, that anytime CMS receives a request for information under the Freedom of Information Act (FOIA), the agency always evaluates whether the information is subject to one of the FOIA exemptions, including Exemption 4, which protects commercial or financial information that is privileged and confidential. We welcome identification of any materials within such reports that the qualified entity believes are subject to a FOIA exemption, and the rationale therefore.

2. Reporting Requirements for Data

Section 105(a)(8) of MACRA also requires a qualified entity to submit a report annually if it provides or sells data. Therefore, consistent with the statutory requirements, we also proposed to require qualified entities that provide or sell data under this subpart to provide the following information as part of its annual report: Information on the entities who received data, the uses of the data, the total amount of fees received for providing, selling, or sharing the data, and any QE DUA violations.

Comment: Several of the comments on reporting requirements for data were the same as those for analyses addressed above. One commenter suggested the addition of information on authorized user data breaches to the annual report. Another commenter stated that the annual reporting requirements for data may contain sensitive commercial information that may be subject to confidentiality provisions between the qualified entity and applicable authorized users.

Response: We believe that data breaches should be reported to CMS in a much timelier manner than the annual report. As discussed above, the QE DUA requires authorized users to notify the qualified entity of any violations of the QE DUA and to comply with the breach provisions governing qualified entities. As a result, we do not believe this element is needed in the annual report.

We recognize that some of the information we proposed to require of qualified entities in their annual reports will be sensitive commercial information. As noted above, anytime CMS receives a request for information under the FOIA, the agency always evaluates whether the information is subject to one of the FOIA exemptions, including Exemption 4, which protects commercial or financial information that is privileged and confidential. Contractual confidentiality provisions between authorized users and qualified entities will not negate CMS' obligations under FOIA, but we welcome identification of any materials within such reports that the qualified entity believes are subject to a FOIA exemption, and the rationale therefore.

E. Assessment for a Breach

1. Violation of a DUA

Section 105(a)(7) of MACRA requires the Secretary to impose an assessment on a qualified entity in the case of a "breach" of a CMS DUA between the Secretary and a qualified entity or a breach of a QE DUA between a qualified entity and an authorized user. Because the term "breach" is defined in HIPAA, and this definition is not consistent with the use of the term for this program, we proposed instead to adopt the term "violation" when referring to a "breach" of a DUA for purposes of this program. We also proposed to define a "violation" to mean a failure to comply with a requirement in a CMS DUA or QE DUA. We also proposed to impose an assessment on any qualified entity that violates a CMS DUA or fails to ensure that their authorized users and their contractors/business associates do not violate a QE DUA.

Comment: A few commenters recommended that CMS further define and provide examples of what would constitute a DUA violation. Another commenter suggested CMS expand the definition of a violation so that both the qualified entity and the authorized user may be held responsible for a breach.

Response: While we recognize that not all terms of the DUAs are equal regarding the risk to the privacy and security of the Medicare data, we believe the aggravating and mitigating circumstances discussed in more detail below provide us the flexibility to ensure the assessment amount is consistent with the nature of the violation. One example of a violation would be knowingly releasing patient names and other protected health information for marketing purposes. Another example of a violation would be sharing individually identifiable information for an individual who does not meet the definition of a patient with a supplier.

While we recognize that it may be the authorized user who is responsible for the violation, we believe Section 105(a)(7) of MACRA does not give us the authority to impose an assessment on the authorized user. However, we do believe that the qualified entity could include terms in their agreement with the authorized user to require the authorized user to pay the assessment if the authorized user is responsible for the violation.

MACRA provides guidance only on the assessment amount and what triggers an assessment, but it does not dictate the procedures for imposing such assessments. We therefore proposed to model qualified entity program procedures on certain relevant provisions of Section 1128A of the Act (Civil Money Penalties) and part 402 (Civil Money Penalties, Assessments, and Exclusions) including the process and procedures for calculating the assessment, notifying a qualified entity of a violation, collecting the assessment, and providing qualified entities an appeals process.

2. Amount of Assessment

Section 105(a)(7)(B) of MACRA specifies that when a violation occurs, the assessment is to be calculated based on the number of affected individuals who are entitled to, or enrolled in, benefits under part A of title XVIII of the Act, or enrolled in part B of such title. Assessments can be up to $100 per affected individual, but, given the broad discretion in establishing some lesser amount, we looked to part 402 as a model for proposing aggravating and mitigating circumstances that would be considered when calculating the assessment amount per impacted individual. However, violations under section 105(a)(7)(B) of MACRA are considered point-in-time violations, not continuing violations.

Number of Individuals

We proposed at § 401.719(d)(5)(i) that CMS will calculate the amount of the assessment of up to $100 per individual entitled to, or enrolled in part A of title XVIII of the Act and/or enrolled in part B of such title whose data was implicated in the violation.

We generally proposed to determine the number of potentially affected individuals by looking at the number of beneficiaries whose Medicare claims information was provided either by CMS to the qualified entity or by the qualified entity to the authorized user in the form of individually identifiable or de-identified data sets that were potentially affected by the violation.

We proposed that a single beneficiary, regardless of the number of times their information appears in a singular non-public report or dataset, would only count towards the calculation of an assessment for a violation once. For qualified entities that provide or sell subsets of the dataset that CMS provided to them, combined information, or non-public analyses, we proposed to require that the qualified entity provide the Secretary with an accurate number of beneficiaries whose data was sold or provided to the authorized user and, thereby, potentially affected by the violation. In those instances in which the qualified entity is unable to establish a reliable number of potentially affected beneficiaries, we proposed to impose the assessment based on the total number of beneficiaries that were included in the data set(s) that was/were transferred to the qualified entity under the CMS DUA.

Assessment Amount per Impacted Individual

As noted above, MACRA allows an assessment in the amount of up to $100 per potentially affected individual. We therefore proposed to draw on 42 CFR part 402 to specify the factors and circumstances that will be considered in determining the assessment amount per potentially affected individual.

We proposed at § 401.719(d)(5)(i)(A) that the following basic factors be considered in establishing the assessment amount per potentially affected individual: (1) The nature and extent of the violation; (2) the nature and extent of the harm or potential harm resulting from the violation; and (3) the degree of culpability and history of prior violations.

In addition, in considering these basic factors and determining the amount of the assessment per potentially affected individual, we proposed to take into account certain aggravating and mitigating circumstances.

We proposed at § 401.719(d)(5)(i)(B)(*1*) that CMS consider certain aggravating circumstances in determining the amount per potentially affected individual, including the following: Whether there were several types of violations, occurring over a lengthy period of time; whether there were many violations or the nature and circumstances indicate a pattern of violations; and whether the nature of the violation had the potential or actually resulted in harm to beneficiaries.

In addition, we proposed at § 401.719(d)(5)(i)(B)(*2*) that CMS take into account certain mitigating circumstances in determining the amount per potentially affected individual, including the following: Whether the violations subject to the imposition of an assessment were few in number, of the same type, and occurring within a short period of time, and/or whether the violation was the result of an unintentional and unrecognized error and the qualified entity took corrective steps immediately after discovering the error.

Comment: One commenter suggested that CMS allow the qualified entity to take corrective action in the case of a minor violation. Another commenter recommended that CMS impose a limit on the assessment amount because not specifying a maximum assessment amount could create a barrier to entry for entities interested in the program. One commenter stated they supported the statutorily set assessment of $100 per affected individual because it creates a strong incentives for excellent data security.

Response: We recognize the need for a corrective action process and have already established one at § 401.719(d)(1) through (3) that applies regardless of the amount of the assessment. We appreciate commenters concerns about creating a barrier for entry, but agree that allowing for an assessment of up to $100 per affected individual creates strong incentives for the qualified entity to ensure the privacy and security of the Medicare data. We believe the basic, aggravating, and mitigating circumstances provide CMS with the flexibility to set the assessment value appropriately given the nature of the violation and the qualified entity's history with violations.

3. Notice of Determination

We looked to the relevant provisions in 42 CFR part 402 and Section 1128A of the Act to frame proposals regarding the specific elements that would be included in the notice of determination. To that end, we proposed at § 401.719(d)(5)(ii) that the Secretary would provide notice of a determination to a qualified entity by certified mail with return receipt requested. The notice of determination would include information on (1) the assessment amount, (2) the statutory and regulatory bases for the assessment, (3) a description of the violations upon which the assessment was proposed, (4) information concerning response to the notice, and (5) the means by which the qualified entity must pay the assessment if they do not intend to request a hearing in accordance with procedures established at Section 1128A of the Act and implemented in 42 CFR part 1005. We did not receive any comments on this proposal so are finalizing it without modification.

4. Failure To Request a Hearing

We also looked to the relevant provisions in 42 CFR part 402 and section 1128A of the Act to inform our proposals regarding what happens when a hearing is not requested.

We proposed at § 401.719(d)(5)(iii) that an assessment will become final if a qualified entity does not request a hearing within 60 days of receipt of the notice of the proposed determination. At this point, CMS would impose the proposed assessment. CMS would notify the qualified entity, by certified mail with return receipt, of the assessment and the means by which the qualified entity may pay the assessment. Under these proposals, a qualified entity would not have the right to appeal an assessment unless it has requested a hearing within 60 days of receipt of the notice of the proposed determination. We did not receive any comments on these proposals so are finalizing them without modification.

5. When an Assessment Is Collectible

We again looked to the relevant provisions in 42 CFR part 402 and section 1128A of the Act to inform our proposed policies regarding when an assessment becomes collectible.

We proposed at § 401.719(d)(5)(iv) that an assessment becomes collectible after the earliest of the following situations: (1) On the 61st day after the qualified entity receives CMS's notice of proposed determination under § 401.719(d)(5)(ii), if the entity does not request a hearing; (2) immediately after the qualified entity abandons or waives its appeal right at any administrative level; (3) 30 days after the qualified entity receives the Administrative Law Judge's (ALJ) decision imposing an assessment under § 1005.20(d), if the qualified entity has not requested a review before the Department Appeal Board (DAB); or (4) 60 days after the qualified entity receives the DAB's decision imposing an assessment if the qualified entity has not requested a stay of the decision under § 1005.22(b). We did not receive any comments on this proposal so are finalizing it without modification.

6. Collection of an Assessment

We also looked to the relevant provisions in 42 CFR part 402 and section 1128A of the Act in framing our proposals regarding the collection of an Assessment.

We proposed at § 401.719(d)(5)(v) that CMS be responsible for collecting any assessment once a determination is made final by HHS. In addition, we proposed that the General Counsel may compromise an assessment imposed under this part, after consulting with CMS or Office of Inspector General (OIG), and the Federal government may recover the assessment in a civil action brought in the United States district court for the district where the claim was presented or where the qualified entity resides. We also proposed that the United States may deduct the amount of an assessment when finally determined, or the amount agreed upon in compromise, from any sum then or later owing the qualified entity. Finally, we proposed that matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under section 1128A(e) of the Act may not be raised as a defense in a civil action by the United States to collect an assessment. We did not receive any comments on these proposals so are finalizing them without modification.

F. Termination of Qualified Entity Agreement

We proposed at § 401.721(a)(7) that CMS may unilaterally terminate the qualified entity's agreement and trigger the data destruction requirements in the CMS DUA if CMS determines through our monitoring program at § 401.717(a) and (b) that a qualified entity or its contractor fails to monitor authorized users' compliance with the terms of their QE DUAs or non-public analysis use agreements. We stated in the proposed rule that we believe this proposed provision is consistent with the intent of MACRA to ensure the protection of data and analyses provided by qualified entities to authorized users under this subpart.

Comment: One commenter stated that CMS should have a violation corrections period prior to terminating a qualified entity. Another commenter recommended that CMS carefully monitor all aspects of the qualified entity program and related authorized user activities to minimize the risk of unintended consequences.

Response: We currently have a process in place to require qualified entities to develop a corrective action plan or to put qualified entities on a special monitoring plan if we determine that the qualified entity violated any terms of the program. In addition, we already have a number of mechanisms in place to monitor qualified entities participating in the program including audits, site visits, and required reporting. We believe the additional annual reporting elements described above will ensure that we can continue to monitor qualified entities appropriately given the changes to the program. As a result, we are finalizing our proposed language on termination of a qualified entity's agreement at § 401.721(a)(7).

G. Additional Data

Section 105(c) of MACRA expands, at the discretion of the Secretary, the data that the Secretary may make available to qualified entities, including standardized extracts of claims data under titles XIX (Medicaid) and XXI (the Children's Health Insurance Program, CHIP) for one or more specified geographic areas and time periods as may be requested by the qualified entity. However, due to issues involving Medicaid data submitted to CMS, including lack of data timeliness and overall data quality, we proposed not to expand the data available to qualified entities from CMS and instead suggested that qualified entities would be better off seeking Medicaid and/or CHIP data through the State Medicaid Agencies.

Comment: Many commenters recommended that CMS expand the data available to qualified entities to include Medicaid and CHIP data. These commenters noted the additional burden of having to request the data from each state individually. On the other hand, one commenter stated that they agreed with CMS' proposal not to expand access to Medicaid and/or CHIP data.

Response: As some commenters noted, we have been working with states to transform our Medicaid Statistical Information System (MSIS) to address concerns regarding data timeliness and quality. This is essential for the Medicaid program to keep pace with the data needed to improve quality of care, track enrollment and utilization of services, improve program integrity, and support states and other stakeholders need for information about Medicaid and CHIP. This new data set is known as Transformed MSIS (T–MSIS). The T–MSIS data set contains enhanced information about beneficiary eligibility, beneficiary and provider enrollment, service utilization, claims and managed care data, and expenditure data for Medicaid and CHIP. We are currently working with states to help them transition from MSIS to T–MSIS.

We recognize commenters' interest in accessing Medicaid and CHIP data from CMS rather than going to each state individually. We believe that T–MSIS can create a framework for CMS collection of Medicaid and CHIP data that addresses many of the concerns about the timeliness and quality of the MSIS data that we raised in the proposed rule. As a result, we anticipate future rulemaking to make Medicaid and CHIP data available to qualified entities when the T–MSIS data becomes available and is determined to be of sufficient quality for use in public provider performance reporting.

Comment: One commenter suggested that CMS also allow qualified entities to request access to Medicare Advantage data.

Response: We believe section 1874(e)(3) of the Act only allows for the disclosure of Medicare claims data under Parts A, B, and D, as well as Medicaid and/or CHIP claims data.

H. Qualified Clinical Data Registries

Section 105(b) of MACRA allows qualified clinical data registries to request access to Medicare data for the purposes of linking the data with clinical outcomes data and performing risk-adjusted, scientifically valid analyses, and research to support quality improvement or patient safety. The CMS research data disclosure policies already allow qualified clinical data registries to request Medicare data for research purposes. More information on accessing CMS data for research can be found on the ResDAC Web site at *www.resdac.org.* Given the existing research request processes and procedures, we proposed not to adopt any new policies or procedures regarding qualified clinical data registries' access to Medicare claims data for quality improvement or patient safety analyses.

Comment: Several commenters recommended that CMS offer qualified clinical data registries an alternative path to the research request process to allow them to access CMS data for quality improvement and patient safety activities. Commenters stated that qualified clinical data registries need data to conduct quality improvement activities that will improve patient care and that, in many cases, this work is not consistent with the research request process requirement that the work to contribute to generalizable knowledge.

Response: We recognize that the research request pathway may not be consistent with types of analyses qualified clinical data registries envision conducting using the CMS data. As a result, we are modifying the regulations to allow qualified clinical data registries to serve as quasi-qualified entities, provided the qualified clinical data registry agrees to meet all the requirements in this subpart with the exception of the requirement at § 401.707(d) that the organization submit information about the claims data it possesses from other sources. In addition, for the purposes of qualified clinical data registries acting as quasi qualified entities under the qualified entity program requirements, we define combined data as, at a minimum, a set of CMS claims data provided under subpart G combined with clinical data or a subset of clinical data. Since the language at section 105(b) of MACRA does not reference section 1874(e)(4)(d) of the Act, which provides parameters for the definition of combined data for the purposes of the qualified entity program, we do not believe these requirements for combined data apply to qualified clinical data registries serving as quasi qualified entities.

We believe that the requirements of the qualified entity program, which was created to allow for provider performance reporting, also create an appropriate framework for qualified clinical data registries to conduct analyses to support quality improvement and patient safety. In addition, we believe that the new parameters of the qualified entity program, discussed in detail above, would allow qualified clinical data registries to work directly with providers and suppliers on issues related to quality improvement and patient safety. Qualified clinical data registries could also elect to become qualified entities and work with providers and suppliers in accordance with applicable laws to develop new quality measures in the context of nonpublic analyses that could then be used across the healthcare system to measure provider and supplier performance.

Comment: Several commenters suggested that CMS make the Social Security Death Master File available to qualified clinical data registries to allow for enhanced accuracy of patient outcomes information.

Response: We recognize that death information is a key aspect of analyses of patient outcomes, but CMS does not have the authority to disclose the Social Security Death Master File to qualified clinical data registries. However, CMS has date of death information for Medicare patients and we include this date of death information on the data files that are shared with qualified entities and those that would be shared with qualified clinical data registries.

I. Other Comments

We received several additional suggestions for improvements to the program regarding topics that were not specifically discussed in the preamble to the proposed rule.

Comment: Several commenters raised issues related to qualified entity application process. One commenter suggested CMS make the application process and costs for becoming a qualified entity more transparent. A few commenters suggested that CMS offer qualified entities better technical assistance on the security certification step of the approval process. One commenter recommended that CMS streamline the application process for applicants that already have certifications or accreditations that demonstrate a high level of security.

Response: We thank commenters for their feedback on the qualified entity application process. We believe the issues raised by commenters on this topic are outside the scope of this final rule. However, we are always looking for ways to improve the program and will take these comments into consideration.

Comment: Some commenters addressed general program requirements of the qualified entity program. One commenter suggested that qualified entities that focus on certain clinical conditions should not have to meet the same threshold for amount of other claims data. Another commenter recommended that CMS allow state-level public reporting in the qualified entity program. A few commenters stated that CMS should provide qualified entities with access to timelier Medicare data. One commenter stated that some of the existing provisions in the CMS DUA conflict with requirements in HIPAA, specifically the requirement to destroy data if and when an organization leaves the program.

Response: We have not established a threshold for the minimum amount of other claims an organization needs to become a qualified entity. Instead, we ask applicants to explain how the data they do have for use in the qualified entity program will be adequate to address concerns about sample size and reliability that have been expressed by stakeholders regarding the calculation of performance measures from a single payer source. Each application is evaluated on its collective merit, including the amount of claims data from other sources, and its explanation of why that data in combination with the requested Medicare data is adequate for the stated purposes of the program.

We also do not prohibit qualified entities from publicly reporting their findings regarding provider and supplier performance at the state-level. Qualified entities are allowed to report on providers and suppliers at any level for which the measures can be used, provided the statutory and regulatory requirements are met, including that no patient information is disclosed.

We currently make data available to qualified entities on quarterly basis. We believe the timeliness of this data strikes the right balance between data completeness and data timeliness.

Finally, we do not believe that requirements in the CMS DUA are inconsistent with HIPAA. We use a very similar DUA to share data with HIPAA-covered providers and suppliers who are participating in Innovation Center models. We do recognize that some qualified entities may have trouble incorporating the Medicare data into their data systems because they may not be able to ensure the destruction of this data once it is linked with other data maintained by the qualified entity. However, we believe that requiring destruction of the data if a qualified entity leaves the program is important for ensuring the privacy and security of CMS data.

Comment: One commenter suggested that CMS clarify how FOIA may or may not apply to data or reports submitted by qualified entities. Another commenter recommended that CMS clarify how the changes to the qualified entity program intersect with other statutory and regulatory requirements.

Response: As we noted above, any information that we collect from qualified entities is subject to FOIA. However, any time we receive a request for information under FOIA, we always evaluate whether the information is subject to one of the FOIA exemptions, including Exemption 4, which protects commercial or financial information that is privileged and confidential.

We are not able to address the breadth and scope of laws with which the qualified entity program requirements may intersect in this rule. Such analyses require case-by-case assessment of the facts at hand, and depending on jurisdiction, may vary based on which state laws apply. Entities should consult with their legal counsel to advise them on what laws apply to them, and to what effect.

Comment: One commenter suggested that the release of Part D data to qualified entities should be tailored to protect the viability of the Part D program.

Response: We are committed to ensuring that commercially sensitive information from the Part D program is protected. As we stated in the previous final rule on the qualified entity program, published on December 7, 2011, we are aware of the concerns related to, and restrictions governing the release of certain Part D drug cost information. Due to these concerns, we only release the Total Drug Cost element to qualified entities. We do not release the four subcomponents of drug cost: Ingredient cost, dispensing fee, vaccine administration fee, and total amount attributable to sales tax.

Comment: One commenter stated that the rule does not address how states that have all payer claims databases (APCDs) can access Medicare data.

Response: We do not believe that state APCDs are prohibited from becoming qualified entities. However, state APCDs with an interest in conducting research rather than provider performance reporting can also request data from CMS via the research request process. Organizations interested in accessing CMS data for research should visit *www.resdac.org.*

Comment: One commenter stated that CMS should adopt a new version of the claims form that includes a field for unique device identifiers.

Response: This comment is outside the scope of the qualified entity rule. That said, CMS uses claims that comply with the HIPAA standard transactions regulations (45 CFR part 162). Any changes to forms would be achieved through rulemaking under those provisions.

Comment: Several commenters stated that they had concerns about the security of the Medicare data.

Response: We are committed to ensuring the privacy and security of all data and we believe the existing and new program requirements create an appropriate framework for maintaining the security of data disclosed to qualified entities. Organizations applying to become qualified entities currently go through a rigorous security review during the application process. In addition, we monitor qualified entities closely to ensure that they continue to maintain appropriate data security standards once approved. As discussed above, we have also established data security protections that qualified entities must meet when sharing data with authorized users, including a requirement that the authorized user report any breaches to the qualified entity (and that the qualified entity report the breaches to CMS).

Comment: Several commenters recommended that CMS clarify that organizations already approved as qualified entities would be allowed to begin using the Medicare data for the uses described in this final rule, regardless of whether the qualified entity has generated a public report.

Response: We would like to clarify that once these regulations become effective, organizations approved as qualified entities will be allowed to use the Medicare data to create non-public analyses and provide or sell such analyses to authorized users, as well provide or sell combined data, or provide Medicare claims data alone at no cost, to certain authorized users. However, we believe that public reporting is a very important aspect of participation in the qualified entity program and would like to remind qualified entities about the provision at § 401.709(d) which requires qualified entities to produce public reports at least annually.

III. Provisions of the Final Rule

For the most part, this final rule incorporates the provisions of the proposed rule. Those provisions of this final rule that differ from the proposed rule are as follows:

- We modified the definition of authorized user at § 401.703(j) to: Include a federal agency, change the term "state agency" to "state entity" to provide additional clarity, and include any contractors (or business associates) that need analyses or data to carry out work on behalf of authorized user third parties.
- We modified the definition of hospital association at § 401.703(n) to include organizations or associations at the local level.
- At § 401.703(r), we modified the definition of patient to extend the window for a face-to-face or telehealth appointment to at least once in the past 24 months.
- We added activities that qualify as treatment under 45 CFR 164.501 to permitted uses of the data subject to the QE DUA.
- We modified the terms of the QE DUA to permit authorized users to re-disclose data subject to the QE DUA as a covered entity would be permitted to disclose PHI for treatment activities, as allowed under 45 CFR 164.506(c)(2).
- At § 401.716(b)(2), we modified the requirements to clarify that a qualified entity may not provide or sell a non-public analysis to an issuer for a geographic area where the issuer does not provide coverage and, thus, does not have any covered lives to contribute to the analyses.
- At § 401.716(b)(4)(iii), we allowed for the disclosure of non-public analyses that individually identify a provider or supplier if every provider or supplier identified in the analysis has notified the qualified entity that analyses may be disclosed to that authorized user without prior review by the provider or supplier.
- We added a procedural step to the review and error correction process for non-public analyses at § 401.717(f) to include confidential notification of the provider or supplier.
- We added a new provision at § 401.722(a) to allow a qualified clinical data registry that agrees to meet the requirements in this subpart, with the exception of the requirement to submit information on the claims data from other sources it possesses, to request

access to Medicare data as a quasi-qualified entity.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

Proposed § 401.718(c) and § 401.716(b)(2)(ii) require a qualified entity to enter into a QE DUA with an authorized user prior to providing or selling data or selling a non-public analyses that contains individually identifiable beneficiary information. Proposed § 401.713(d) requires specific provisions in the QE DUA. Proposed § 401.716(c) requires a qualified entity to enter into a non-public analyses agreement with the authorized user as a pre-condition to providing or selling de-identified analyses. We estimate that it will take each qualified entity a total of 40 hours to develop the QE DUA and non-public analyses agreement. Of the 40 hours, we estimate it will take a professional/technical services employee with an hourly labor cost of $75.08 a total of 20 hours to develop both the QE DUA and non-public analyses agreement and estimate that it will require a total of 20 hours of legal review at an hourly labor cost of $77.16 for both the QE DUA and non-public analyses agreement. We also estimate that it will take each qualified entity 2 hours to process and maintain each QE DUA or non-public analyses agreement with an authorized user by a professional/technical service employee with an hourly labor cost of $75.08. While there may be two different staff positions that perform these duties (one that is responsible for processing the QE DUAs and/or non-public analyses agreement and one that is responsible for maintaining the QE DUA and/or non-public analyses agreement), we believe that both positions would fall under the professional/technical services employee labor category with an hourly labor cost of $75.08. There are currently 15 qualified entities; however we estimate that number will increase to 20 if these proposals are finalized. This number includes qualified entities and "quasi qualified entities" (meaning qualified clinical data registries that are approved under § 401.722(a) as described in this preamble), which we hereinafter collectively refer to as "qualified entity". This would mean that to develop each QE DUA and non-public analysis agreement, the burden cost per qualified entity would be $3,045 with a total estimated burden for all 15 qualified entities of $45,675. This does not include the two hours to process and maintain each QE DUA.

As discussed in the regulatory impact analysis below, we estimate that each qualified entity would need to process and maintain 70 QE DUAs or non-public analyses agreements as some authorized users may receive both datasets and a non-public analyses and would only need to execute one QE DUA. We estimate that it will take each qualified entity 2 hours to process and maintain each QE DUA or non-public analyses agreement. This would mean the burden cost per qualified entity to process and maintain 70 QE DUAs or non-public analyses agreements would be $10,511 with a total estimated burden for all 15 qualified entities of $157, 668. While we anticipate that the requirement to create a QE DUA and/or non-public analyses agreement will only be incurred once by a qualified entity, we believe that the requirement to process and maintain the QE DUAs and/or non-public analyses will be an ongoing cost.

These regulations would also require a qualified entity to submit additional information as part of its annual report to CMS. A qualified entity is currently required to submit an annual report to CMS under § 401.719(b). Proposed § 401.719(b)(3) and (4) provide for additional reporting requirements if a qualified entity chooses to provide or sell analyses and/or data to authorized users. The burden associated with this requirement is the time and effort necessary to gather, process, and submit the required information to CMS. As noted above, there are currently 15 qualified entities; however we estimate that number will increase to 20 if these proposals are finalized. Some qualified entities may not want to bear the risk of the potential assessments and have been able to accomplish their program goals under other CMS data sharing programs, therefore some qualified entities may not elect to provide or sell analyses and/or data to authorized users. As a result, we estimate that 15 qualified entities will choose to provide or sell analyses and/or data to authorized users, and therefore, would be required to comply with these additional reporting requirements within the first three years of the program. We further estimate that it would take each qualified entity 50 hours to gather, process, and submit the required information. We estimate that it will take each qualified entity 34 hours to gather the required information, 15 hours to process the information, and 1 hour to submit the information to CMS. We believe a professional or technical services employee of the qualified entity with an hourly labor cost of $75.08 will fulfill these additional annual report requirements. We estimate that 15 qualified entities will need to comply with this requirement and that the total estimated burden associated with this requirement is $56,310. We requested comment on the type of employee and the number of hours that will be needed to fulfill these additional annual reporting requirements.

As a reminder, the final rule for the qualified entity program, published December 7, 2011, included information about the burden associated with the provisions in that rule. Specifically, §§ 401.705 through 401.709 provide the application and reapplication requirements for qualified entities. The burden associated with these requirements is currently approved under OMB control number 0938–1144 with an expiration date of May 31, 2018. This package accounts for 35 responses. Section 401.713(a) states that as part of the application review and approval process, a qualified entity would be required to execute a DUA with CMS, that among other things, reaffirms the statutory bar on the use of Medicare data for purposes other than those referenced above. The burden associated with executing this DUA is currently approved under OMB control number 0938–0734 with an expiration date of December 31, 2017. This package accounts for 9,240 responses (this package covers all CMS DUAs, not only DUAs under the qualified entity program). We currently have 15 qualified entities and estimate it will increase to 20 so we have not surpassed the previously approved numbers.

We based the hourly labor costs on those reported by the Bureau of Labor

Statistics (BLS) at *http://data.bls.gov/pdq/querytool.jsp?survey=ce* for this labor category. We used the annual rate for 2014 and added 100 percent for overhead and fringe benefit costs.

TABLE 1—COLLECTION OF INFORMATION

Regulation section(s)	OMB Control No.	Number of respondents	Number of responses per respondent	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($) *	Total labor cost of reporting ($)	Total cost ($)
§ 401.718, § 401.716, and § 401.713 (DUA and non-public analyses agreement Development).	0938 New	15	1	20	300	75.08	22,524	22,524
§ 401.718 and § 401.716 (Legal Review)	0938 New	15	1	20	300	77.16	23,148	23,148
§ 401.718 and § 401.716 (Processing and Maintenance).	0938 New	15	70	2	2,100	75.08	157,668	157,668
§ 401.719(b)	0938 New	15	1	50	750	75.08	56,310	56,310
Total		15	73		3,450			259,650

* The values listed are based on 100 percent overhead and fringe benefit calculations.

Note: There are no capital/maintenance costs associated with the information collection requirements contained in this rule; therefore, we have removed the associated column from Table 1.

If you comment on these information collection and recordkeeping requirements, please submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, CMS–5061–F
Fax: (202) 395–6974; or
Email: OIRA_submission@omb.eop.gov

V. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

A. Response to Comments

We received a few comments on the anticipated effects of these modifications to the qualified entity program.

Comment: One commenter suggested that it would take each qualified entity an estimated 60 hours to develop and review the QE DUA and non-public analyses agreement. Of those 60 hours, 30 hours would be to develop the QE DUA and non-public analyses agreement and 30 would be needed for legal review. In addition, the commenter estimated that it would take each qualified entity 3 hours to process and maintain each QE DUA and non-public analyses agreement.

Response: In the proposed rule, we estimated that it would take each qualified entity 40 hours to develop and review the QE DUA and non-public analyses agreement. Of those 40 hours, 20 hours would be needed to develop the QE DUA and non-public analyses agreement and 20 hours would be needed for legal review. We also estimated that it would take 2 hours to process and maintain each QE DUA and non-public analyses agreement. We recognize that some qualified entities may spend more hours than other qualified entities to develop, process, and maintain QE DUAs and non-public analyses agreements. For example, some qualified entities may spend 60 hours to develop the QE DUA and non-public analyses agreement and other qualified entities will spend 30 hours. However, we believe that 40 hours to develop the QE DUA and the non-public analyses agreement and 2 hours to process each QE DUA and the non-public analyses agreement is a reasonable average.

Comment: We received a few comments about the impact on providers and suppliers. One commenter suggested that CMS reconsider the assumption that all 1500 small rural hospitals would not be impacted by this rule and that the 3 hour average estimate for providers and suppliers to review non-public analyses appears too low. Another commenter suggested that CMS monitor provider burden as expanded data access unfolds and the number of qualified entities and authorized users begin to grow.

Response: We appreciate commenters' concerns about the potential impact on providers and suppliers. As discussed above in section II.A.4, we made procedural changes to the proposed review and corrections process for non-public analyses in order to reduce burden to both qualified entities and providers and suppliers. As a first step of the review and correction process, the qualified entity would be required to notify the provider or supplier that analyses that individually identify the provider or supplier are going to be released to an authorized user and allow the provider or supplier to opt-in to the review and corrections process at § 401.717(a) through (e). This notification should include a short summary of the analyses, the process for the provider or supplier to request the analyses, and the date on which the qualified entity will release the analyses to the authorized user. This date should be at least 65 calendar days from the date the provider or supplier is notified of the analyses.

Given these procedural changes to the review and corrections process in the context of the non-public analyses, we believe that the 3 hours average estimate for providers and suppliers to review non-public analyses is a sufficient estimate of provider and supplier burden. This average takes into account the range of potential cases given the new review and corrections process. In some cases, for example, notification may be sufficient to meet the needs of providers or suppliers. In other cases, however, where the analyses are similar to previous analyses or use data the provider or supplier has already corrected, the provider or supplier may choose not to review the analyses. In addition, as discussed in the proposed rule, even if a provider or supplier requests the non-public analyses, there will be variability in the amount of time providers or suppliers will need for the review and corrections process.

As discussed in the proposed rule, we do not anticipate this rule will have a significant impact on the operations of a substantial number of small rural hospitals because we anticipate that most qualified entities will focus their performance evaluation efforts on metropolitan areas where the majority of health services are provided. In addition, given the limited number of health services provided in rural regions, we anticipate that any analyses that included rural regions would not individually identify the providers or suppliers, but rather focus on regional or state metrics. As suggested by a commenter, we will monitor provider burden as the number of qualified entities grows and more non-public analyses are provided to authorized users.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, 96), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). For the reasons discussed below, we estimate that the total impact of this final rule will be less than $58 million and therefore, it will not reach the threshold for economically significant effects and is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that most hospitals and most other providers are small entities as that term is used in the RFA (including small businesses, nonprofit organizations, and small governmental jurisdictions). However, since the total estimated impact of this rule is less than $100 million, and the total estimated impact will be spread over 82,500 providers and suppliers (who are the subject of reports), no one entity will face significant impact. Of the 82,500 providers, we estimate that 78,605 will be physician offices that have average annual receipts of $11 million and 4,125 will be hospitals that have average annual receipts of $38.5 million. As discussed below, the estimated cost per provider is $8,426 (see table 5 below) and the estimated cost per hospital is $6,523 (see table 5 below). For both types of entities, these costs will be a very small percentage of overall receipts. Thus, we are not preparing an analysis of options for regulatory relief of small businesses because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

For section 105(a) of MACRA, we estimate that two types of entities may be affected by the additional program opportunities: Qualified entities that choose to provide or sell non-public analyses or data to authorized users; and providers and suppliers who are identified in the non-public analyses create by qualified entities and provided or sold to authorized users.

We anticipate that most providers and suppliers that may be identified in qualified entities' non-public analyses will be hospitals and physicians. Many hospitals and most other healthcare providers and suppliers are small entities, either by being nonprofit organizations or by meeting the Small Business Administration definition of a small business (having revenues of less than $38.5 million in any 1 year) (for details see the Small Business Administration's Web site at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf* (refer to the 620000 series). For purposes of the RFA, physicians are considered small businesses if they generate revenues of $11 million or less based on Small Business Administration size standards. Approximately 95 percent of physicians are considered to be small entities.

The analysis and discussion provided in this section and elsewhere in this final rule complies with the RFA requirements. Because we acknowledge that many of the affected entities are small entities, the analysis discussed throughout the preamble of this final rule constitutes our regulatory flexibility analysis for the remaining provisions and addresses comments received on these issues.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis, if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Any such regulatory impact analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We do not believe this final rule has impact on significant operations of a substantial number of small rural hospitals because we anticipate that most qualified entities will focus their performance evaluation efforts on metropolitan areas where the majority of health services are provided. As a result, this rule will not have a significant impact on small rural hospitals. Therefore, the Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. This final rule will not impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, of $146 million or more. Specifically, as explained below we anticipate the total impact of this rule on all parties to be approximately $58 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this final rule in accordance with Executive Order 13132 and have determined that this regulation will not have any substantial direct effect on State or local governments, preempt States, or otherwise have a Federalism implication.

C. Anticipated Effects

1. Impact on Qualified Entities

Because section 105(a) of MACRA allows qualified entities to use the data in new ways to provide or sell non-public analyses or data to authorized users, there is little quantitative information to inform our estimates on the number of analyses and datasets that the qualified entity costs may provide or sell or on the costs associated with the creation of the non-public analyses or datasets. Therefore, we look to the estimates from the original qualified entity rules to estimate the number of hours that it may take to create non-public analyses, to process provider/supplier appeals and revisions, and to complete annual reports. We also looked to the Centers for Medicare and Medicaid's cost of providing data to qualified entities since qualified entities' data fees are equal to the government's cost to make the data available.

There are currently 15 qualified entities and these qualified entities all are in different stages of the qualified entity program. For example, some qualified entities have released public reports and some qualified entities are still completing the security requirements in order to receive Medicare data. Given the requirements in the different phases and the current status of the qualified entities, we estimate that 11 qualified entities will be able to provide or sell analyses and/or data to authorized users within the first year of the program, and therefore, will be incurring extra costs. As discussed above, we believe the total number of qualified entities will ultimately grow to 20 in subsequent years, with 15 entities providing or selling analyses and/or data to authorized users. In estimating qualified entity impacts, we used hourly labor costs in several labor categories reported by the Bureau of Labor Statistics (BLS) at *http://data.bls.gov/pdq/querytool.jsp?survey=ce.* We used the annual rates for 2014 and added 100 percent for overhead and fringe benefit costs. These rates are displayed in Table 2.

TABLE 2—LABOR RATES FOR QUALIFIED ENTITY IMPACT ESTIMATES

	2014 Hourly wage rate (BLS)	OH and fringe (100%)	Total hourly costs
Professional and technical services	$37.54	$37.54	$75.08
Legal review	38.58	38.58	77.16
Custom computer programming	43.05	43.05	86.10
Data processing and hosting	34.02	34.02	68.04
Other information services	39.72	39.72	79.44

We estimate that within the first year that 11 qualified entities will provide or sell on average 55 non-public analyses or provide or sell 35 datasets. We do not believe the number of datasets and non-public analyses per qualified entity will change in future years of the program.

In the original proposed rule for the qualified entity program (76 FR 33566), we estimated that each qualified entities' activities to analyze the Medicare claims data, calculate performance measures and produce public provider performance reports will require 5,500 hours of effort per qualified entity. We anticipate under this final rule that implements section 105(a) of MACRA that qualified entities will base the non-public analyses on their public performance reports. Therefore, the creation of the non-public analyses will require much less effort and only require a fraction of the time it takes to produce the public reports. We estimate that a qualified entity's activities for each non-public analysis to analyze the Medicare claims data, calculate performance measures, and produce the report will require 320 hours, between five and six percent of the time to produce the public reports. We anticipate that half of this time will be spent on data analysis, measure calculation, and report creation and the other half on data processing.

We anticipate that within the first year of the program a qualified entity will, on average, provide one-year datasets containing all data types for a cohort of 750,000 to 1.75 million beneficiaries to 35 authorized users. We estimate that it will require 226 hours to create each dataset that will be provided to an authorized user. We looked to the Centers for Medicare and Medicaid Centers' data costs and time to estimate a qualified entity's costs and time to create datasets. While the majority of the time will be devoted to computer processing, we anticipate about 100 hours will be spent on computer programming, particularly if the qualified entity is de-identiying the data.

We further estimate that, on average, each qualified entity will expend 7,500 hours of effort processing providers' and suppliers' appeals of their performance reports and producing revised reports, including legal review of the appeals and revised reports. These estimates assume that, as discussed below in the section on provider and supplier impacts, on average 25 percent of providers and suppliers will appeal their results from a qualified entity. Responding to these appeals in an appropriate manner will require a significant investment of time on the part of qualified entities. This equates to an average of four hours per appeal for each qualified entity. These estimates are similar to those in the Qualified Entities final rule. We assume that the complexity of appeals will vary greatly, and as such, the time required to address them will also vary greatly. Many appeals may be able to be dealt with in an hour or less while some appeals may require multiple meetings between the qualified entity and the affected provider or supplier. On average, however, we believe that this is a reasonable estimate of the burden of the appeals process on qualified entities. We discuss the burden of the appeals process on providers and suppliers below.

We estimate that each qualified entity will spend 40 hours creating a non-public analyses agreement template and a QE DUA. We also estimate that it will take a qualified entity 2 hours to process a QE DUA or non-public analyses agreement.

Finally, we estimate that each qualified entity will spend 50 hours on the additional annual reporting requirements.

Qualified entities will be required to notify CMS of inappropriate disclosures or use of beneficiary identifiable data pursuant to the requirements in the CMS DUA. We believe that the report generated in response to an inappropriate disclosure or use of beneficiary identifiable data will be generated as a matter of course by the qualified entities and therefore, will not require significant additional effort. Based on the assumptions we have described, we estimate the total impact on qualified entities for the first year of the program to be a cost of $27,925,198.

TABLE 3—IMPACT ON QUALIFIED ENTITIES FOR THE FIRST YEAR OF THE PROGRAM

Activity	Hours				Labor hourly cost	Cost per authorized user	Number of authorized users	Number of qualified entities	Total cost impact
	Professional and technical	Legal	Computer programming	Data processsing and hosting					
[Impact on Qualified Entities]									
Dissemination of Data									
Data processing & hosting				126	$68.04	$8,573	35	11	$3,300,620
Computer programming			100		86.10	8,610	35	11	3,314,850
Total: Dissemination of Data									$6,615,470
Non-Public Analyses									
Data analysis/measure calculation/report preparation			160		86.10	13,776	55	11	8,334,480
Data Processing and hosting				160	68.04	10,886	55	11	6,586,272
Total: Non-public Analyses									14,920,752
Processing of Provider Appeals and Report Revision									
Qualified entity processing of provider appeals and report revision	5,500				75.08	412,940		11	4,542,340
Qualified entity legal analysis of provider appeals and report revisions		2,000			77.16	154,320		11	1,697,520
Total: Qualified entity processing of provider appeals and report revision									6,239,860
QE DUA and Non-Public Analyses Agreements									
QE DUA and Non-public analyses:									
Development of the QE DUA and non-public analyses agreement	20				75.08	1502		11	16,518
Legal review of the QE DUA and non-public analyses agreement		20			77.16	1,543		11	16,975
Processing QE DUA and non-public analyses agreement	2				75.08	150	70	11	115,623
Total QE DUA and non-public analyses agreements									149,116
Additional Annual Report Requirements	50				75.08	3,754		11	41,294
Total qualified entity Impacts									27,966,492

2. Impact on Healthcare Providers and Suppliers

We note that numerous healthcare payers, community quality collaboratives, States, and other organizations are producing performance measures for healthcare providers and suppliers using data from other sources, and that providers and suppliers are already receiving performance reports from these sources. We anticipate that the review of non-public analyses will merely be added to those existing efforts to improve the statistical validity of the measure findings.

Table 4 reflects the hourly labor rates used in our estimate of the impacts of the first year of section 105(a) of MACRA on healthcare providers and suppliers.

TABLE 4—LABOR RATES FOR PROVIDER AND SUPPLIER IMPACT ESTIMATES

	2014 Hourly wage rate (BLS)	Overhead and fringe benefits (100%)	Total hourly costs
Physicians' offices	$38.27	$38.27	$76.54
Hospitals	29.65	29.65	59.30

We anticipate that the impacts on providers and suppliers consist of costs to review the performance reports generated by qualified entities and, if they choose, appeal the performance calculations. We believe, on average, each qualified entity will produce non-public analyses that in total include information on 7,500 health providers and suppliers. This is based on estimates in the qualified entity final rule, but also include an increase of 50 percent because we believe that more providers and suppliers will be included in the non-public analyses. We anticipate that the largest proportion of providers and suppliers will be physicians because they comprise the largest group of providers and suppliers, and are a primary focus of many recent performance evaluation efforts. We also believe that many providers and suppliers will be the recipients of the non-public analyses in order to support their own performance improvement activities, and therefore, there will be no requirement for a correction or appeals process. As discussed above, there is no requirement for a corrections or appeals process where the analysis only individually identifies the (singular) provider or supplier who is being provided or sold the analysis. Based on our review of information from existing programs, we assume that 95 percent of the recipients of performance reports (that is, an average of 7,125 per qualified entity) will be physicians, and 5 percent (that is, an average of 375 per qualified entity) will be hospitals and other suppliers. Providers and suppliers receive these reports with no obligation to review them, but we assume that most will do so to verify that their calculated performance measures reflect their actual patients and health events. Because these non-public analyses will be based on the same underlying data as the public performance reports, we estimate that it will take less time for providers or suppliers to review these analyses and generate an appeal. We estimate that, on average, each provider or supplier will devote three hours to reviewing these analyses. We also estimate that 25 percent of the providers and suppliers will decide to appeal their performance calculations, and that preparing the appeal will involve an average of seven hours of effort on the part of a provider or supplier. As with our assumptions regarding the level of effort required by qualified entities in operating the appeals process, we believe that this average covers a range of provider efforts from providers who will need just one or two hours to clarify any questions or concerns regarding their performance reports to providers who will devote significant time and resources to the appeals process.

Using the hourly costs displayed in Table 4, the impacts on providers and suppliers are calculated below in Table 5. Based on the assumptions we have described, we estimate the total impact on providers for the first year of the program to be a cost of $29,690,386.

As stated above in Table 3, we estimate the total impact on qualified entities to be a cost of $27,966,492. Therefore, the total impact on qualified entities and on providers and suppliers for the first year of the program is estimated to be $57,656,878.

TABLE 5—IMPACT ON PROVIDERS AND SUPPLIERS FOR THE FIRST YEAR OF THE PROGRAM

Activity	Hours per provider		Labor hourly cost	Cost per provider	Number of providers per qualified entity	Number of qualified entities	Total cost impact
	Physician offices	Hospitals					
[Impact on Providers and Suppliers]							
Physician office review of performance reports	3	....	$76.54	$230	7,125	11	$18,026,250
Hospital review of performance reports	....	3	59.30	178	375	11	734,250
Physician office preparing and submitting appeal requests to qualified entities	7	....	76.54	536	1,781	11	10,500,776
Hospital preparing and submitting appeal requests to qualified entities	....	7	59.30	415	94	11	429,110
Total Impact on Providers and Suppliers	....	....	....	....	....	....	29,690,386

D. Alternatives Considered

The statutory provisions added by section 105(a) of MACRA are detailed and prescriptive about the permissible uses of the data under the Qualified Entity Program. We believe there are limited approaches that will ensure statutory compliance. We considered less prescriptive requirements on the provisions that will need to be included in the agreements between qualified entities and authorized users that received or purchased analyses or data. For example, we could have required less strenuous data privacy and security protections such as not setting a minimum standard for protection of beneficiary identifiable data or non-public analyses. In addition, we could have reduced additional restrictions on re-disclosure or permitted data or analyses to be re-disclosed to additional downstream users. While these approaches might reduce costs for qualified entities, we did not adopt such an approach because of the importance of protecting beneficiary data. We believe if we do not require qualified entities to provide sufficient evidence of data privacy and security protection capabilities, there will be increased risks related to the protection of beneficiary identifiable data.

E. Conclusion

As explained above, we estimate the total impact for the first year of the program on qualified entities and providers to be a cost of $57,656,878. While we anticipate the number of qualified entities to increase slightly, we do not anticipate significant growth in the qualified entity program given the qualified entity program requirements, as well as other existing programs that allow entities to obtain Medicare data. Based on these estimates, we conclude this final rule does not reach the threshold for economically significant effects and thus is not considered a major rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 401 as set forth below:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

■ 1. The authority citation for part 401 is revised to read as follows:

Authority: Secs. 1102, 1871, and 1874(e) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395w–5) and sec. 105, Pub. L. 114–10, 129 Stat. 87.

■ 2. Section 401.703 is amended by adding paragraphs (j) through (u) to read as follows:

§ 401.703 Definitions.

* * * * *

(j) *Authorized user* is a third party and its contractors (including, where applicable, business associates as that term is defined at 45 CFR 160.103) that need analyses or data covered by this section to carry out work on behalf of that third party (meaning not the qualified entity or the qualified entity's contractors) to whom/which the qualified entity provides or sells data as permitted under this subpart. Authorized user third parties are limited to the following entities:

(1) A provider.

(2) A supplier.

(3) A medical society.

(4) A hospital association.

(5) An employer.

(6) A health insurance issuer.

(7) A healthcare provider and/or supplier association.

(8) A state entity.

(9) A federal agency.

(k) *Employer* has the same meaning as the term "employer" as defined in section 3(5) of the Employee Retirement Insurance Security Act of 1974.

(l) *Health insurance issuer* has the same meaning as the term "health insurance issuer" as defined in section 2791 of the Public Health Service Act.

(m) *Medical society* means a nonprofit organization or association that provides unified representation and advocacy for physicians at the national or state level and whose membership is comprised of a majority of physicians.

(n) *Hospital association* means a nonprofit organization or association that provides unified representation and advocacy for hospitals or health systems at a national, state, or local level and whose membership is comprised of a majority of hospitals and health systems.

(o) *Healthcare Provider and/or Supplier Association* means a nonprofit organization or association that provides unified representation and advocacy for providers and suppliers at the national or state level and whose membership is comprised of a majority of suppliers or providers.

(p) *State Entity* means any office, department, division, bureau, board, commission, agency, institution, or committee within the executive branch of a state government.

(q) *Combined data* means, at a minimum, a set of CMS claims data provided under this subpart combined with claims data, or a subset of claims data from at least one of the other claims data sources described in § 401.707(d).

(r) *Patient* means an individual who has visited the provider or supplier for a face-to-face or telehealth appointment at least once in the past 24 months.

(s) *Marketing* means the same as the term "marketing" at 45 CFR 164.501 without the exception to the bar for "consent" based marketing.

(t) *Violation* means a failure to comply with a requirement of a CMS DUA (CMS data use agreement) or QE DUA (qualified entity data use agreement).

(u) *Required by law* means the same as the phrase "required by law" at 45 CFR 164.103.

■ 3. Section 401.713 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 401.713 Ensuring the privacy and security of data.

(a) *Data use agreement between CMS and a qualified entity.* A qualified entity must comply with the data requirements in its data use agreement with CMS (hereinafter the CMS DUA). Contractors (including, where applicable, business associates) of qualified entities that are anticipated to have access to the Medicare claims data or beneficiary identifiable data in the context of this program are also required to execute and comply with the CMS DUA. The CMS DUA will require the qualified entity to maintain privacy and security protocols throughout the duration of the agreement with CMS, and will ban the use or disclosure of Medicare data or any derivative data for purposes other than those set out in this subpart. The CMS DUA will also prohibit the use of unsecured telecommunications to transmit such data, and will specify the circumstances under which such data must be stored and may be transmitted.

* * * * *

(d) *Data use agreement between a qualified entity and an authorized user.* In addition to meeting the other requirements of this subpart, and as a pre-condition of selling or disclosing any combined data or any Medicare claims data (or any beneficiary-identifiable derivative data of either kind) and as a pre-condition of selling or disclosing non-public analyses that include individually identifiable beneficiary data, the qualified entity must enter a DUA (hereinafter the QE DUA) with the authorized user. Among other things laid out in this subpart, such QE DUA must contractually bind the authorized user (including any contractors or business associates described in the definition of authorized user) to the following:

(1)(i) The authorized user may be permitted to use such data and non-public analyses in a manner that a HIPAA Covered Entity could do under the following provisions:

(A) Activities falling under paragraph (1) of the definition of "health care operations" under 45 CFR 164.501: Quality improvement activities, including care coordination activities and efforts to track and manage medical costs; patient-safety activities; population-based activities such as those aimed at improving patient safety, quality of care, or population health, including the development of new models of care, the development of means to expand coverage and improve access to healthcare, the development of means of reducing healthcare disparities, and the development or improvement of methods of payment or coverage policies.

(B) Activities falling under paragraph (2) of the definition of "health care operations" under 45 CFR 164.501: Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities.

(C) Activities that qualify as "fraud and abuse detection or compliance activities" under 45 CFR 164.506(c)(4)(ii).

(D) Activities that qualify as "treatment" under 45 CFR 164.501.

(ii) All other uses and disclosures of such data and/or such non-public analyses must be forbidden except to the extent a disclosure qualifies as a "required by law" disclosure as defined at 45 CFR 164.103.

(2) The authorized user is prohibited from using or disclosing the data or non-public analyses for marketing purposes as defined at § 401.703(s).

(3) The authorized user is required to ensure adequate privacy and security protection for such data and non-public analyses. At a minimum, regardless of whether the authorized user is a HIPAA covered entity, such protections of beneficiary identifiable data must be at least as protective as what is required of covered entities and their business associates regarding protected health information (PHI) under the HIPAA Privacy and Security Rules. In all cases, these requirements must be imposed for the life of such beneficiary identifiable data or non-public analyses and/or any derivative data, that is until all copies of such data or non-public analyses are returned or destroyed. Such duties must be written in such a manner as to survive termination of the QE DUA, whether for cause or not.

(4) Except as provided for in paragraph (d)(5) of this section, the authorized user must be prohibited from re-disclosing or making public any such data or non-public analyses.

(5)(i) At the qualified entity's discretion, it may permit an authorized user that is a provider as defined in § 401.703(b) or a supplier as defined in § 401.703(c), to re-disclose such data and non-public analyses as a covered entity will be permitted to disclose PHI under 45 CFR 164.506(c)(4)(i), under 45 CFR 164.506(c)(2), or under 45 CFR 164.502(e)(1).

(ii) All other uses and disclosures of such data and/or such non-public analyses is forbidden except to the extent a disclosure qualifies as a "required by law" disclosure.

(6) Authorized users who/that receive the beneficiary de-identified combined data or Medicare data as contemplated under § 401.718 are contractually prohibited from linking the beneficiary de-identified data to any other identifiable source of information, and must be contractually barred from attempting any other means of re-identifying any individual whose data is included in such data.

(7) The QE DUA must bind authorized user(s) to notifying the qualified entity of any violations of the QE DUA, and it must require the full cooperation of the authorized user in the qualified entity's efforts to mitigate any harm that may result from such violations, or to comply with the breach provisions governing qualified entities under this subpart.

■ 4. Section 401.716 is added to read as follows:

§ 401.716 Non-public analyses.

(a) *General.* So long as it meets the other requirements of this subpart, and subject to the limits in paragraphs (b) and (c) of this section, the qualified entity may use the combined data to create non-public analyses in addition to performance measures and provide or sell these non-public analyses to authorized users (including any contractors or business associates described in the definition of authorized user).

(b) *Limitations on a qualified entity.* In addition to meeting the other requirements of this subpart, a qualified entity must comply with the following limitations as a pre-condition of dissemination or selling non-public analyses to an authorized user:

(1) A qualified entity may only provide or sell a non-public analysis to a health insurance issuer as defined in § 401.703(l), after the health insurance issuer or a business associate of that health insurance issuer has provided the qualified entity with claims data that represents a majority of the health insurance issuer's covered lives, using one of the four methods of calculating covered lives established at 26 CFR 46.4375–1(c)(2), for the time period and geographic region covered by the issuer-requested non-public analyses. A qualified entity may not provide or sell a non-public analysis to a health insurance issuer if the issuer does not have any covered lives in the geographic region covered by the issuer-requested non-public analysis.

(2) Analyses that contain information that individually identifies one or more beneficiaries may only be disclosed to a provider or supplier (as defined at § 401.703(b) and (c)) when both of the following conditions are met:

(i) The analyses only contain identifiable information on beneficiaries with whom the provider or supplier have a patient relationship as defined at § 401.703(r).

(ii) A QE DUA as defined at § 401.713(d) is executed between the qualified entity and the provider or supplier prior to making any individually identifiable beneficiary information available to the provider or supplier.

(3) Except as specified under paragraph (b)(2) of this section, all analyses must be limited to beneficiary de-identified data. Regardless of the HIPAA covered entity or business associate status of the qualified entity and/or the authorized user, de-identification must be determined based on the standards for HIPAA covered entities found at 45 CFR 164.514(b).

(4) Analyses that contain information that individually identifies a provider or supplier (regardless of the level of the provider or supplier, that is, individual clinician, group of clinicians, or integrated delivery system) may not be disclosed unless one of the following three conditions apply:

(i) The analysis only individually identifies the provider or supplier that is being supplied the analysis.

(ii) Every provider or supplier individually identified in the analysis has been afforded the opportunity to appeal or correct errors using the process at § 401.717(f).

(iii) Every provider or supplier individually identified in the analysis has notified the qualified entity, in writing, that analyses can be disclosed to the authorized user without first going through the appeal and error correction process at § 401.717(f).

(c) *Non-public analyses agreement between a qualified entity and an authorized user for beneficiary de-identified non-public analyses disclosures.* In addition to the other requirements of this subpart, a qualified entity must enter a contractually binding non-public analyses agreement with the authorized user (including any contractors or business associates described in the definition of authorized user) as a pre-condition to providing or selling de-identified analyses. Such non-public analyses agreement must contain the following provisions:

(1) The authorized user may not use the analyses or derivative data for the following purposes:

(i) Marketing, as defined at § 401.703(s).

(ii) Harming or seeking to harm patients or other individuals both within and outside the healthcare system regardless of whether their data are included in the analyses.

(iii) Effectuating or seeking opportunities to effectuate fraud and/or abuse in the healthcare system.

(2) If the authorized user is an employer as defined in § 401.703(k), the authorized user may only use the analyses or derivative data for purposes of providing health insurance to employees, retirees, or dependents of employees or retirees of that employer.

(3)(i) At the qualified entity's discretion, it may permit an authorized user that is a provider as defined in § 401.703(b) or a supplier as defined in § 401.703(c), to re-disclose the de-identified analyses or derivative data, as a covered entity will be permitted under 45 CFR 164.506(c)(4)(i), or under 45 CFR 164.502(e)(1).

(ii) All other uses and disclosures of such data and/or such non-public analyses is forbidden except to the extent a disclosure qualifies as a "required by law" disclosure.

(4) If the authorized user is not a provider or supplier, the authorized user may not re-disclose or make public any non-public analyses or derivative data except as required by law.

(5) The authorized user may not link the de-identified analyses to any other identifiable source of information and may not in any other way attempt to identify any individual whose de-identified data is included in the analyses.

(6) The authorized user must notify the qualified entity of any DUA violations, and it must fully cooperate with the qualified entity's efforts to mitigate any harm that may result from such violations.

■ 5. Section 401.717 is amended by adding paragraph (f) to read as follows:

§ 401.717 Provider and supplier requests for error correction.

* * * * *

(f) A qualified entity must comply with the following requirements before disclosing non-public analyses, as defined at § 401.716, which contain information that individually identifies a provider or supplier:

(1) A qualified entity must confidentially notify a provider or supplier that non-public analyses that individually identify the provider or supplier are going to be released to an authorized user at least 65 calendar days before disclosing the analyses. This confidential notification must include a short summary of the analyses (including the measures calculated), the process for the provider or supplier to request the analyses, the authorized users receiving the analyses, and the date on which the qualified entity will release the analyses to the authorized user.

(2) A qualified entity must allow providers and suppliers the opportunity to opt-in to the review and correction process as defined in paragraphs (a) through (e) of this section, anytime during the 65 calendar days. If a provider or supplier chooses to opt-in to the review and correction process more than 5 days into the notification period, the time for the review and correction process is shortened from 60 days to the number of days between the provider or supplier opt-in date and the release date specified in the confidential notification.

■ 6. Section 401.718 is added to read as follows:

§ 401.718 Dissemination of data.

(a) *General.* Subject to the other requirements in this subpart, the requirements in paragraphs (b) and (c) of this section and any other applicable laws or contractual agreements, a qualified entity may provide or sell combined data or provide Medicare data at no cost to authorized users defined at § 401.703(b), (c), (m), and (n).

(b) *Data*—(1) *De-identification.* Except as specified in paragraph (b)(2) of this section, any data provided or sold by a qualified entity to an authorized user must be limited to beneficiary de-identified data. De-identification must be determined based on the de-identification standards for HIPAA covered entities found at 45 CFR 164.514(b).

(2) *Exception.* If such disclosure will be consistent with all applicable laws, data that individually identifies a beneficiary may only be disclosed to a provider or supplier (as defined at § 401.703(b) and (c)) with whom the identifiable individuals in such data have a current patient relationship as defined at § 401.703(r).

(c) *Data use agreement between a qualified entity and an authorized user.* A qualified entity must contractually require an authorized user to comply with the requirements in § 401.713(d) prior to providing or selling data to an authorized user under § 401.718.

■ 7. Section 401.719 is amended by adding paragraphs (b)(3) and (4) and (d)(5) to read as follows:

§ 401.719 Monitoring and sanctioning of qualified entities.

* * * * *

(b) * * *

(3) Non-public analyses provided or sold to authorized users under this subpart, including the following information:

(i) A summary of the analyses provided or sold, including—

(A) The number of analyses.

(B) The number of purchasers of such analyses.

(C) The types of authorized users that purchased analyses.

(D) The total amount of fees received for such analyses.

(E) QE DUA or non-public analyses agreement violations.

(ii) A description of the topics and purposes of such analyses.

(iii) The number of analyses disclosed with unresolved requests for error correction.

(4) Data provided or sold to authorized users under this subpart, including the following information:

(i) The entities who received data.

(ii) The basis under which each entity received such data.

(iii) The total amount of fees received for providing, selling, or sharing the data.

(iv) QE DUA violations.

* * * * *

(d) * * *

(5) In the case of a violation, as defined at § 401.703(t), of the CMS DUA or the QE DUA, CMS will impose an assessment on a qualified entity in accordance with the following:

(i) *Amount of assessment.* CMS will calculate the amount of the assessment of up to $100 per individual entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act or enrolled for benefits under Part B of such title whose data was implicated in the violation based on the following:

(A) *Basic factors.* In determining the amount per impacted individual, CMS takes into account the following:

(*1*) The nature and the extent of the violation.

(*2*) The nature and the extent of the harm or potential harm resulting from the violation.

(*3*) The degree of culpability and the history of prior violations.

(B) *Criteria to be considered.* In establishing the basic factors, CMS considers the following circumstances:

(*1*) *Aggravating circumstances.* Aggravating circumstances include the following:

(*i*) There were several types of violations occurring over a lengthy period of time.

(*ii*) There were many of these violations or the nature and circumstances indicate a pattern of violations.

(*iii*) The nature of the violation had the potential or actually resulted in harm to beneficiaries.

(*2*) *Mitigating circumstances.* Mitigating circumstances include the following:

(*i*) All of the violations subject to the imposition of an assessment were few in number, of the same type, and occurring within a short period of time.

(*ii*) The violation was the result of an unintentional and unrecognized error and the qualified entity took corrective steps immediately after discovering the error.

(C) *Effects of aggravating or mitigating circumstances.* In determining the amount of the assessment to be imposed under paragraph (d)(5)(i)(A) of this section:

(*1*) If there are substantial or several mitigating circumstance, the aggregate amount of the assessment is set at an amount sufficiently below the maximum permitted by paragraph (d)(5)(i)(A) of this section to reflect the mitigating circumstances.

(*2*) If there are substantial or several aggravating circumstances, the aggregate amount of the assessment is set at an amount at or sufficiently close to the maximum permitted by paragraph (d)(5)(i)(A) of this section to reflect the aggravating circumstances.

(D) The standards set for the qualified entity in this paragraph are binding, except to the extent that—

(*1*) The amount imposed is not less than the approximate amount required to fully compensate the United States, or any State, for its damages and costs, tangible and intangible, including but not limited to the costs attributable to the investigation, prosecution, and administrative review of the case.

(*2*) Nothing in this section limits the authority of CMS to settle any issue or case as provided by part 1005 of this title or to compromise any assessment as provided by paragraph (d)(5)(ii)(E) of this section.

(ii) *Notice of determination.* CMS must propose an assessment in accordance with this paragraph (d)(5), by notifying the qualified entity by certified mail, return receipt requested. Such notice must include the following information:

(A) The assessment amount.

(B) The statutory and regulatory bases for the assessment.

(C) A description of the violations upon which the assessment was proposed.

(D) Any mitigating or aggravating circumstances that CMS considered when it calculated the amount of the proposed assessment.

(E) Information concerning response to the notice, including:

(*1*) A specific statement of the respondent's right to a hearing in accordance with procedures established at Section 1128A of the Act and implemented in 42 CFR part 1005.

(*2*) A statement that failure to respond within 60 days renders the proposed determination final and permits the imposition of the proposed assessment.

(*3*) A statement that the debt may be collected through an administrative offset.

(*4*) In the case of a respondent that has an agreement under section 1866 of the Act, notice that imposition of an exclusion may result in termination of the provider's agreement in accordance with section 1866(b)(2)(C) of the Act.

(F) The means by which the qualified entity may pay the amount if they do not intend to request a hearing.

(iii) *Failure to request a hearing.* If the qualified entity does not request a hearing within 60 days of receipt of the notice of proposed determination, any assessment becomes final and CMS may impose the proposed assessment.

(A) CMS notifies the qualified entity, by certified mail with return receipt requested, of any assessment that has been imposed and of the means by which the qualified entity may satisfy the judgment.

(B) The qualified entity has no right to appeal an assessment for which the qualified entity has not requested a hearing.

(iv) *When an assessment is collectible.* An assessment becomes collectible after the earliest of the following:

(A) Sixty (60) days after the qualified entity receives CMS's notice of proposed determination under paragraph (d)(5)(ii) of this section, if the qualified entity has not requested a hearing.

(B) Immediately after the qualified entity abandons or waives its appeal right at any administrative level.

(C) Thirty (30) days after the qualified entity receives the ALJ's decision imposing an assessment under § 1005.20(d) of this title, if the qualified entity has not requested a review before the DAB.

(D) Sixty (60) days after the qualified entity receives the DAB's decision imposing an assessment if the qualified entity has not requested a stay of the decision under § 1005.22(b) of this title.

(v) *Collection of an assessment.* Once a determination by HHS has become final, CMS is responsible for the collection of any assessment.

(A) The General Counsel may compromise an assessment imposed under this part, after consulting with CMS or OIG, and the Federal government may recover the assessment in a civil action brought in the United States district court for the district where the claim was presented or where the qualified entity resides.

(B) The United States or a state agency may deduct the amount of an assessment when finally determined, or the amount agreed upon in compromise, from any sum then or later owing the qualified entity.

(C) Matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under section 1128A(e) of the Act may not be raised as a defense in a civil action by the United States to collect an assessment.

■ 8. Section 401.721 is amended by adding paragraph (a)(7) to read as follows:

§ 401.721 Terminating an agreement with a qualified entity.

(a) * * *

(7) Fails to ensure authorized users comply with their QE DUAs or analysis use agreements.

* * * * *

■ 9. Section 401.722 is added to read as follows:

§ 401.722 Qualified clinical data registries.

(a) A qualified clinical data registry that agrees to meet all the requirements in this subpart, with the exception of § 401.707(d), may request access to Medicare data as a quasi qualified entity in accordance with such qualified entity program requirements.

(b) Notwithstanding § 401.703(q) (generally defining combined data), for purposes of qualified clinical data registries acting as quasi qualified entities under the qualified entity program requirements, combined data means, at a minimum, a set of CMS claims data provided under this subpart combined with clinical data or a subset of clinical data.

Dated: June 22, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: June 28, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–15708 Filed 7–1–16; 11:15 am]

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Part IV

The President

Executive Order 13732—United States Policy on Pre- and Post-Strike Measures To Address Civilian Casualties in U.S. Operations Involving the Use of Force

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Federal Register
Vol. 81, No. 130
Thursday, July 7, 2016

Presidential Documents

Title 3—

The President

Executive Order 13732 of July 1, 2016

United States Policy on Pre- and Post-Strike Measures To Address Civilian Casualties in U.S. Operations Involving the Use of Force

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct as follows:

Section 1. *Purpose.* United States policy on civilian casualties resulting from U.S. operations involving the use of force in armed conflict or in the exercise of the Nation's inherent right of self-defense is based on our national interests, our values, and our legal obligations. As a Nation, we are steadfastly committed to complying with our obligations under the law of armed conflict, including those that address the protection of civilians, such as the fundamental principles of necessity, humanity, distinction, and proportionality.

The protection of civilians is fundamentally consistent with the effective, efficient, and decisive use of force in pursuit of U.S. national interests. Minimizing civilian casualties can further mission objectives; help maintain the support of partner governments and vulnerable populations, especially in the conduct of counterterrorism and counterinsurgency operations; and enhance the legitimacy and sustainability of U.S. operations critical to our national security. As a matter of policy, the United States therefore routinely imposes certain heightened policy standards that are more protective than the requirements of the law of armed conflict that relate to the protection of civilians.

Civilian casualties are a tragic and at times unavoidable consequence of the use of force in situations of armed conflict or in the exercise of a state's inherent right of self-defense. The U.S. Government shall maintain and promote best practices that reduce the likelihood of civilian casualties, take appropriate steps when such casualties occur, and draw lessons from our operations to further enhance the protection of civilians.

Sec. 2. *Policy.* In furtherance of U.S. Government efforts to protect civilians in U.S. operations involving the use of force in armed conflict or in the exercise of the Nation's inherent right of self-defense, and with a view toward enhancing such efforts, relevant departments and agencies (agencies) shall continue to take certain measures in present and future operations.

(a) In particular, relevant agencies shall, consistent with mission objectives and applicable law, including the law of armed conflict:

(i) train personnel, commensurate with their responsibilities, on compliance with legal obligations and policy guidance that address the protection of civilians and on implementation of best practices that reduce the likelihood of civilian casualties, including through exercises, pre-deployment training, and simulations of complex operational environments that include civilians;

(ii) develop, acquire, and field intelligence, surveillance, and reconnaissance systems that, by enabling more accurate battlespace awareness, contribute to the protection of civilians;

(iii) develop, acquire, and field weapon systems and other technological capabilities that further enable the discriminate use of force in different operational contexts;

(iv) take feasible precautions in conducting attacks to reduce the likelihood of civilian casualties, such as providing warnings to the civilian population (unless the circumstances do not permit), adjusting the timing of attacks, taking steps to ensure military objectives and civilians are clearly distinguished, and taking other measures appropriate to the circumstances; and

(v) conduct assessments that assist in the reduction of civilian casualties by identifying risks to civilians and evaluating efforts to reduce risks to civilians.

(b) In addition to the responsibilities above, relevant agencies shall also, as appropriate and consistent with mission objectives and applicable law, including the law of armed conflict:

(i) review or investigate incidents involving civilian casualties, including by considering relevant and credible information from all available sources, such as other agencies, partner governments, and nongovernmental organizations, and take measures to mitigate the likelihood of future incidents of civilian casualties;

(ii) acknowledge U.S. Government responsibility for civilian casualties and offer condolences, including *ex gratia* payments, to civilians who are injured or to the families of civilians who are killed;

(iii) engage with foreign partners to share and learn best practices for reducing the likelihood of and responding to civilian casualties, including through appropriate training and assistance; and

(iv) maintain channels for engagement with the International Committee of the Red Cross and other nongovernmental organizations that operate in conflict zones and encourage such organizations to assist in efforts to distinguish between military objectives and civilians, including by appropriately marking protected facilities, vehicles, and personnel, and by providing updated information on the locations of such facilities and personnel.

Sec. 3. *Report on Strikes Undertaken by the U.S. Government Against Terrorist Targets Outside Areas of Active Hostilities.* (a) The Director of National Intelligence (DNI), or such other official as the President may designate, shall obtain from relevant agencies information about the number of strikes undertaken by the U.S. Government against terrorist targets outside areas of active hostilities from January 1, 2016, through December 31, 2016, as well as assessments of combatant and non-combatant deaths resulting from those strikes, and publicly release an unclassified summary of such information no later than May 1, 2017. By May 1 of each subsequent year, as consistent with the need to protect sources and methods, the DNI shall publicly release a report with the same information for the preceding calendar year.

(b) The annual report shall also include information obtained from relevant agencies regarding the general sources of information and methodology used to conduct these assessments and, as feasible and appropriate, shall address the general reasons for discrepancies between post-strike assessments from the U.S. Government and credible reporting from nongovernmental organizations regarding non-combatant deaths resulting from strikes undertaken by the U.S. Government against terrorist targets outside areas of active hostilities.

(c) In preparing a report under this section, the DNI shall review relevant and credible post-strike all-source reporting, including such information from nongovernmental sources, for the purpose of ensuring that this reporting is available to and considered by relevant agencies in their assessment of deaths.

(d) The Assistant to the President for National Security Affairs may, as appropriate, request that the head of any relevant agency conduct additional reviews related to the intelligence assessments of deaths from strikes against terrorist targets outside areas of active hostilities.

Sec. 4. *Periodic Consultation.* In furtherance of the policies and practices set forth in this order, the Assistant to the President for National Security

Affairs, through the National Security Council staff, will convene agencies with relevant defense, counterterrorism, intelligence, legal, civilian protection, and technology expertise to consult on civilian casualty trends, consider potential improvements to U.S. Government civilian casualty mitigation efforts, and, as appropriate, report to the Deputies and Principals Committees, consistent with Presidential Policy Directive 1 or its successor. Specific incidents will not be considered in this context, and will continue to be examined within relevant chains of command.

Sec. 5. *General Provisions.* (a) The policies and practices set forth above are not intended to alter, and shall be implemented consistent with, the authority and responsibility of commanders and other U.S. personnel to execute their mission as directed by the President or other appropriate authorities, which necessarily includes the inherent right of self-defense and the maintenance of good order and discipline among U.S. personnel. No part of this order modifies the chain of command of the U.S. Armed Forces or the authority of U.S. commanders.

(b) No part of this order modifies priorities in the collection of intelligence or the development, acquisition, or fielding of weapon systems and other technological capabilities.

(c) No part of this order shall prejudice or supplant established procedures pertaining to administrative or criminal investigative or judicial processes in the context of the military justice system or other applicable law and regulation.

(d) The policies set forth in this order are consistent with existing U.S. obligations under international law and are not intended to create new international legal obligations; nor shall anything in this order be construed to derogate from obligations under applicable law, including the law of armed conflict.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
July 1, 2016.

[FR Doc. 2016–16295
Filed 7–6–16; 11:15 am]
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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

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